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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2200]

PART 3320—ACTS CONCERNING LIMITED AREAS

Subpart 3326—Leases for Minerals in Lands Withdrawn for Reclamation Purposes Within Lake Mead Recreation Area

MINERAL LEASING

1. Section 3326.0–3 is amended to read as follows:

§ 3326.0–3 Authority to lease; description of area.

(a) The Act of October 8, 1964 (78 Stat. 1039; 16 U.S.C. 460n) provides for mineral leasing within the Lake Mead Recreation Area, subject to such limitations, conditions, or regulations as the Secretary may prescribe, and to such extent as will not be inconsistent with either the recreational use or the primary use of that portion of the area heretofore withdrawn for reclamation purposes.

(b) The area subject to the regulations in this part is that area of land and water which is shown on a certain map identified as "boundary map, RA–LM–7060–B, revised July 17, 1963," which is on file and which is available for public inspection in the office of the Director of the National Park Service and in the headquarters office of the superintendent of the Lake Mead National Recreation Area. The area subject to these regulations may be revised by the Secretary as authorized in the act.

2. Section 3326.1 is amended to read as follows:

§ 3326.1 Other regulations applicable.

Except as otherwise specifically provided in Subpart 3326, the regulations contained in Parts 3100 and 3150 of this title and in 30 CFR Part 211 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws. However, mineral deposits of coal, oil, gas, phosphate, potassium, and sodium shall be governed by regulations issued under the Acts of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281), as amended, to which group 3100 is specifically applicable.

§ 3326.8 [Revoked]

3. Section 3326.8 is repealed.

STEWART L. UDALL,
Secretary of the Interior.

SEPTEMBER 22, 1965.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT

SUBCHAPTER B—LAND TENURE MANAGEMENT

[Circular 2201]

PART 1720—PROGRAMS AND OBJECTIVES

Subpart 1725—Program Policy

PART 2240—SALES AND EXCHANGES

Subpart 2243—Public Sales

PART 2410—LAND CLASSIFICATION

Subpart 2410—Land Classification; General

Subpart 2411—Procedures

PART 1720—PROGRAMS AND OBJECTIVES

Part 1720, consisting of Subpart 1725, is added to read as follows:

Subpart 1725—Program Policy

Sec.

1725.01 Purpose.
1725.1 Current administration.
1725.2 Disposal policy.
1725.2–1 Pricing policy.
1725.3 Management policy.
1725.3–1 Priority of use for lands retained for multiple use management.
1725.3–2 Intensity of use and management of lands retained for multiple use management.
1725.3–3 Components of multiple use management.

§ 1725.01 Purpose.

This subpart lists general and basic policies which will be followed in the implementation of the various public land disposal and management authorities administered by the Secretary of the Interior through the Bureau of Land Management.

§ 1725.1 Current administration.

Pending classification authorized by the Classification and Multiple Use Act (78 Stat. 986, 43 U.S.C. 1411–18) or other available authority, all lands administered by the Secretary through the Bureau of Land Management will continue to be administered for multiple use and sustained yield of the several products and services obtainable therefrom.

§ 1725.2 Disposal policy.

Public lands will be transferred out of Federal ownership in the most efficient manner possbile. This will be accomplished, where practicable, by the following procedures.

(a) Encouragement and assistance will be extended to State, County, and local governments in master planing and zoning. They will be encouraged to utilize the best modern techniques for quality land utilization, including preservation of natural beauty and of open-space values.

(b) Participation of the public and consultation with local government will be invited in the formulation of plans for transfers of public lands.

(c) Timely and orderly identification and disposition of lands needed for urban or suburban purposes, or chiefly valuable for residential, commercial, industrial, agricultural, or public purposes will be made.

(d) Practices and procedures will be utilized which will achieve appropriate dispositions with minimum administrative costs.

(e) Priorities will be established based upon availability of funds, urgency of needs for public lands, and resulting economies or effectiveness of Government operations.

§ 1725.2–1 Pricing policy.

The public land laws generally require as consideration for transfer of public lands out of Federal ownership, a fair return in the form of one or more

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Circular Distribution List

of the following: Money, scrip, lands, or other property; development of the lands; or some public benefit, tangible or intangible. Where the law requires the Secretary to determine the return, such determination will be made in accordance with the following principles:

(a) Wherever the law does not provide otherwise, disposals to private persons and profit organizations will be made at not less than fair market values for the interests conveyed and through competitive bidding.

(b) Transfers to States and local government agencies for commercial, or industrial purposes will be through negotiated sale at fair market values.

(c) Transfer of land to States and local government agencies and to nonprofit organizations to be developed for public purposes will be made at prices and other terms that will encourage and facilitate the accomplishment of the public purposes involved.

(d) Where development is required by law or regulation in lieu of less than full payment, there must be appropriate assurance that the development effort will be bona fide and substantial.

§ 1725.3 Management policy.

§ 1725.3–1 Priority of use for lands retained for multiple use management.

No overall priority is assigned by the Classification and Multiple Use Act or by the Secretary to any specific use. The Secretary or his delegate will authorize, under applicable authority, that use or combination of uses which will best achieve the objectives of multiple use, taking into consideration all pertinent factors, including, but not limited to, ecology, existing uses, and the relative values of the various resources in particular areas.

§ 1725.3–2 Intensity of use and management of lands retained for multiple use management.

The lands will be managed for optimum production of the various products and for those uses for which they are physically and economically suited. The following matters will be considered:

(a) Existing or future demand for the resource use, value, or commodity.

(b) Coordination and cooperation with the resource use and management programs of States, local governments, public organizations and private landowners.

(c) Consistency with national programs.

(d) Compatibility of the possible uses.

§ 1725.3–3 Components of multiple use management.

Section 1 of the Classification and Multiple Use Act lists ten objectives of public land management. The methods of management of the public lands will be governed by the provision of existing laws. The listed objectives as interpreted by the Secretary are as follows:

(a) *Domestic livestock grazing.* Management of public lands for domestic livestock grazing involves the protection, regulated use, and development of forage producing public lands and the management of livestock (cattle, sheep, horses, and goats) use to obtain a sustained yield of forage.

(b) *Fish and wildlife development and utilization.* Management of public lands for fish and wildlife development and utilization involves the protection, regulated use, and development of habitat on public lands and waters to obtain a sustained yield of fish and wildlife and provision and maintenance of public access to fish and wildlife resources.

(c) *Industrial development.* Management of public lands for industrial development involves the protection, regulated use, and development of public lands in a manner to facilitate the growth and stability of industry, whether off-site or on-site, long term or short term.

(d) *Mineral production.* Management of public lands for mineral production involves the protection, regulated use, and development of public lands in a manner to facilitate the extraction and processing of minerals, whether off-site or on-site, long term or short term.

(e) *Occupancy.* Management of public lands for occupancy involves the protection, regulated use, and development of lands as sites for economically and socially useful structures, either publicly or privately owned.

(f) *Outdoor recreation.* Management of public lands for outdoor recreation involves the protection, regulated use, and development of public lands having open-space values in a manner that will preserve those values and will make them available for appropriate recreation enjoyment by the public.

(g) *Timber production.* Management of public lands for timber production involves the protection, regulated use, and development of public forest and woodland areas to obtain a sustained yield of forest products.

(h) *Watershed protection.* Management of public lands for watershed protection involves the protection, regulated use, and development of any public lands in a manner to control runoff; to minimize soil erosion, siltation, and other destructive consequences of uncontrolled water flows; and to maintain and improve storage, yield, quality, and quantity of surface and subsurface waters.

(i) *Wilderness preservation.* Management of public lands for wilderness preservation involves the protection and regulated use of public lands which are in a roadless and primitive condition in a manner to preserve their essential wilderness character.

(j) *Preservation of public values.* Management of public land for preservation of public values that would be lost if the land passed from Federal ownership involves the protection, regulated use, and development of any public lands having unique or scarce characteristics or site values in a manner to insure their continued availability to the general public, either national or local, temporarily or permanently.

PART 2240—SALES AND EXCHANGES

Subpart 2243—Public Sales

Subpart 2243, Public Sales, is amended to change the caption of existing § 2243.1 to read: "Procedures under R.S. 2455"; existing § 2243.2 is renumbered § 2243.1–6; and the following sections are added:

§ 2243.01 Purpose.

(a) The regulations in §§ 2243.03—2243.1 implement R.S. 2455, as amended (43 U.S.C. 1171), which permits the sale of isolated tracts and tracts mountainous or too rough for cultivation.

(b) The regulations in § 2243.2 implement the Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421–1427), which authorizes the sale of public lands that are required for the orderly growth and development of a community or which are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops), industrial, or public uses or development.

§ 2243.1 Procedures under R.S. 2455.

* * * * *

§ 2243.2 Procedures under the Public Land Sale Act of September 19, 1964.

§ 2243.2–1 General.

(a) *Authority.* The Public Land Sale Act authorizes and directs the Secretary to sell public lands that are classified under the Classification and Multiple Use Act (78 Stat. 986, 43 U.S.C. 1411–18) for sale after a determination that the lands are required for orderly growth and development of a community or are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for raising forage crops), industrial or public uses or development. Such lands shall be sold in tracts not exceeding 5,120 acres, to qualified governmental agencies at appraised fair market value, or to qualified individuals through competitive bidding at not less than the appraised fair market value. The authority to make such sales shall terminate June 30, 1969, except that sales for which notice has been given in accordance with section 3 of the Act, prior to June 30, 1969, may be consummated and patents issued in connection therewith after June 30, 1969.

(b) *Objectives.* (1) In the administration of the Public Land Sale Act the Secretary will place on the market, as soon as possible after needs are determined and the local zoning authority having jurisdiction enacts zoning regulations, public lands required for the orderly growth or development of a community or chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for raising forage crops), industrial or public uses or development and classified for sale under this Act pursuant to the regulations in Part 2410 of this chapter.

(2) Sale programs will be scheduled in a manner to make all actions consistent insofar as practicable with established or proposed State or local governmental programs and with State, county, and other local governmental comprehensive and detailed plans. Sales of lands required for the orderly growth and development of a community will not be made unless adequate local governmental comprehensive plans have been adopted and adequate zoning regulations are in effect. Sales of lands not required for the orderly growth and development of a community may be made where, the authorized officer determines that adequate zoning regulations exist and the disposal would be consistent with the objectives of the local governments involved.

(3) The authorized officers of the Bureau of Land Management will cooperate with State, county, and local governmental agencies to facilitate the achievement of the objectives of these regulations.

(4) Reservations and restrictions in patents issued under the Act will be kept to the minimum necessary to carry out the requirements of the law, and to protect the public interest in the lands and their development, but in no case will restrictions be imposed to insure proper development of the lands after they have passed from Federal ownership.

(c) *Definitions.* As used in this section:

(1) The term "public land" means vacant, unappropriated, and unreserved public lands in Alaska, or public lands withdrawn by E.O. 6910 of November 26, 1934, as amended, or E.O. 6964 of February 5, 1935, as amended, and not otherwise withdrawn or reserved, or public lands within grazing districts established

under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315), and not otherwise withdrawn or reserved.

(2) The term "fair market value of the lands" means the dollar value of the lands as estimated by the authorized officer in accordance with approved Department of the Interior standards, taking into consideration all the terms and conditions of the transfer including restrictions to be inserted in the patent for the lands.

(3) The term "proper land office" means the land office of the Bureau of Land Management in the State or Land District in which the lands are situated. For lands in North Dakota or South Dakota, it means the land office in Billings, Mont.; for lands in Nebraska or Kansas, it means the land office at Cheyenne, Wyo.; for lands in Oklahoma, it means the land office at Santa Fe, N. Mex.; and for lands in other States it means the Bureau of Land Management, Washington, D.C., 20240.

(4) "Qualified governmental agency" means any of the following, including their lawful agents and instrumentalities, which are authorized under State law to own the land: (i) the State, county, municipality, or other local government subdivision within which the land is located and (ii) any municipality within convenient access to the lands, if the lands are within the same State as the municipality.

(5) "Qualified individual" means (i) any individual who is a citizen or otherwise a national of the United States (or who has declared his intention to become a citizen) aged 21 years or more; (ii) any partnership or association, each of the members of which is a qualified individual as defined in subdivision (i); and (iii) any corporation organized under the laws of the United States or of any State thereof, and authorized to hold title to real property in the State in which the land is located.

(6) The "Act" means the Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421–1427).

§ 2243.2–2 Lands subject to sale.

Only tracts of public land that are classified by the authorized officer, pursuant to the criteria and procedures in Part 2410 of this chapter for sale under the Act can be sold pursuant to the regulation in § 2243.2.

§ 2243.2–3 Petition; application; Bureau motion.

(a) The authorized officer may, either on his own motion or in response to a petition for classification, classify lands in accordance with the criteria of Part 2410, and offer them for sale under the provisions of this subpart.

(b) Applications, together with petitions required under Part 2410 (hereinafter called petition-applications) to have tracts classified and ordered into market under this section of the regulations, shall be made on forms approved by the Director, properly executed by the applicant and filed in the proper land office.

(c) Each petition-application, except those filed by a qualified governmental agency, must be accompanied by a nonrefundable service charge of $25.

(d) With every petition-application shall be submitted:

(1) A statement designed to show that the lands are needed for the orderly growth and development of a community or are chiefly valuable for residential, commercial, agricultural (exclusive of lands chiefly valuable for grazing and raising forage crops) industrial or public uses or development, plus information on the type of development contemplated, use to which the land is to be put, structures and other improvements which should be erected on the land, and approximate dates of need for the development.

(2) A statement by local planning or governing officials showing the nature of the zoning regulations, if any, which are in effect.

§ 2243.2–4 Notice; publication.

(a) Not less than 90 days before offering lands for sale under the Act, the authorized officer will notify the head of the governing body of the political subdivision of the State having jurisdiction over zoning in the geographic area within which the lands are located, to afford that body an opportunity to zone or rezone the land for use in accordance with local planning and development. In the absence of such political subdivision, notification will be sent to the Governor of the State. This notice may be a copy of a classification decision (either proposed or initial) issued pursuant to § 2411.1–1 of this chapter.

(b) Not less than 30 days before entering into an agreement with a governmental agency or the opening of bids, notice of offering of lands for sale shall be published in the FEDERAL REGISTER and an announcement published in a newspaper of general circulation in the area in which the lands are situated.

(c) Where lands are sold pursuant to notice prescribed in paragraph (b) of this section, the purchaser or purchasers of the lands will be required to pay the cost, if any, of publishing the announcement in the newspaper. Where more than one purchaser is involved in a transaction, the costs will be shared in such proportions as the authorized officer deems equitable.

§ 2243.2–5 Sales through competitive bidding; time, place, simultaneous bids.

If classified lands are offered through competitive bidding:

(a) The date, time, place and manner for submitting bids will be specified in the public notice required by § 2243.2–4 (b).

(b) Bids may be made by the principal or his agent.

(c) Sealed bids sent will be considered only if received at the place and prior to the hour fixed in the notice. Each bid shall be accompanied by certified check, post office money order, bank draft or cashier's check made payable to the Bureau of Land Management, for the amount of the bid plus cost of publication (as contained in the notice of sale) and must be enclosed in a sealed envelope which shall be marked as prescribed in the notice. In the event that valid sealed bids of the same amount are received from two or more persons, the first in time, as shown by the date stamp on the envelope, will be considered the highest of those bids. For sealed bids sent by mail, the date stamp means the stamp affixed by the Post Office. For sealed bids delivered to the Bureau of Land Management other than by mail, the date stamp means the stamp affixed by the Bureau of Land Management. If two or more envelopes containing valid bids of the same amount bear the same date stamp, they will be considered simultaneously filed, and the determination of which is the highest of these bids will be by drawing.

(d) The authorized officer shall publicly declare the highest qualifying sealed bid received. If the public notice of sale published pursuant to § 2243.2–4(b) provides for oral bids, such bids, in increments specified by the authorized officer, shall then be invited. After oral bids, if any, are received, the authorized officer shall declare the highest qualifying bid. The person declared to have entered the highest qualifying bid shall be afforded a reasonable time, in the judgment of the authorized officer, in which to submit payment in the form provided in paragraph (c) of this section. Such person shall be bound by his bid and the regulations in this section to complete the purchase in accordance therewith from the time he is declared high bidder until the end of the tenth day after he submits the payment requested by the authorized officer. In the event the authorized officer rejects the highest qualified bid or releases the bidder from it, the authorized officer will determine whether the lands will be withdrawn from the market or reoffered.

(e) The acceptance of an offer to purchase will be by the issuance of a final certificate to the bidder. Until the final certificate is issued, the authorized officer has the right at any time to determine that the lands should not be sold, or that any and all bids should be rejected. If the high bid is not less than the fair market value of the land on the date for receiving bids, as specified in the public

notice issued pursuant to § 2243.2–4(b), any appreciation or depreciation thereafter in value of the lands will not be a basis for a determination that the lands will not be sold. Sales will not be consummated, in the discretion of the authorized officer, when for example:

(1) Circumstances reveal that the highest bid otherwise acceptable is less than the fair market value of the land on the date of the sale set in the public notice thereof, or

(2) Collusive or other activities have hindered or restrained free and open bidding.

(f) The petitioner-applicant or any bidder has no contractual or other rights as against the United States, and no action taken will create any contractual or other obligations of the United States until the final certificate is issued. Issuance of the final certificate, however, will not preclude the Secretary of the Interior from vacating the sale in whole or part because of fraud not disclosed at the time of issuance of the final certificate or because of lack of knowledge of facts or conditions existing at that time which, if known prior to issuance of the final certificate, would have been grounds for refusing to consummate the sale.

§ 2243.2–6 Classification; notice; segregative effect.

(a) Classification shall be made in accordance with the provisions of Part 2410 of this chapter.

(b) At least 60 days before classification for sale under the Act of tracts of land in excess of 2,560 acres, the authorized officer shall publish a notice of the proposed classification in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the land to be classified. Publication in the FEDERAL REGISTER of a notice of proposed classification or of a notice of classification for sale under the Act will segregate the affected land from all forms of disposal, including the mining laws, other than sale under the Act, except to the extent that the classification notice or any modification thereof, may specifically limit is segregative effect. See § 2411.1–2(e). The notice shall state that all mineral deposits in lands sold under the Act will be reserved to the United States.

(c) Where tracts of 2,560 acres or less are involved, notation on the land office records of a proposed classification or classification for sale under the Act will segregate the lands from all appropriations, including locations under the mining laws, and from other petitions and applications except for sale under this Act and except also to the extent that the classification order or any modification thereof may specifically limit its segregative effect.

(d) The segregative effect of such classification order shall continue for 2 years from the date of publication unless the classification is continued thereafter in accordance with law and pertinent regulations, in which event the segregation shall continue for the duration of the classification, unless sooner terminated by the authorized officer.

(e) Under regulations in this chapter relating to grazing, no lands embraced in a grazing lease, license or permit may be sold unless and until the prospective purchaser has made provision for compensation for any authorized grazing improvements placed on the lands. See § 4122.3–5.

§ 2243.2–7 Patents: Reservations and restrictions.

(a) All patents or other evidence of title issued under the Act shall contain a reservation to the United States of all mineral deposits. Such reserved mineral deposits are withdrawn, by operation of law, from appropriation under the public land laws including the mining and mineral leasing laws.

(b) Patents may also contain any additional reservations or restrictions which the authorized officer determines are necessary in the public interest, in the light of the objectives and principles stated in § 2243.2–1(b).

PART 2410—LAND CLASSIFICATION

Part 2410 is revised to read as follows:

Subpart 2410—Land Classification; General

Sec.
2410.0–2 Objectives.
2410.0–3 Authority.
2410.0–4 Responsibilities.
2410.0–5 Definitions.
2410.1 Criteria.
2410.1–1 General criteria for all land classification.
2410.1–2 Retention for multiple use management classification criteria.
2410.1–3 Disposal classification criteria.
2410.1–4 Criteria for segregation.

Subpart 2411—Procedures

2411.0–3 Authority.
2411.1 Disposal classification procedure.
2411.1–1 Petition-application system.
2411.1–2 Special procedures where proposed disposal classification exceeds 2,560 acres.
2411.1–3 Rights to occupy or settle.
2411.1–4 Preference right of petitioner-applicant.
2411.1–5 Opening of lands to disposal.
2411.1–6 Allowance and entry.
2411.2 Procedure for retention for multiple use management classifications.

Subpart 2410—Land Classification; General

§ 2410.0–2 Objectives.

The statutes cited in § 2410.0–3 authorize the Secretary of the Interior to classify or otherwise take appropriate steps looking to the disposition of public lands, and on an interim basis, to classify public lands for retention and management, subject to requirements of the applicable statutes. In addition to any requirements of law, it is the policy of the Secretary (a) to specify those criteria which will be considered in the exercise of his authority and (b) to establish procedures which will permit the prompt and efficient exercise of his authority with, as far as is practicable, the knowledge and participation of the interested parties, including the general public. Nothing in these regulations is meant to affect applicable State laws governing the appropriation and use of water, regulation of hunting and fishing or exercise of any police power of the State.

§ 2410.0–3 Authority.

(a) All vacant public lands, except those in Alaska, have been, with certain exceptions, withdrawn from entry, selection, and location under the nonmineral land laws by Executive Order 6910, of November 26, 1934, and Executive Order 6964 of February 5, 1935, and amendments thereto, and by the establishment of grazing districts under section 1 of the Act of June 28, 1934 (48 Stat. 1269), as amended (43 U.S.C. 315). Section 7 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f), authorizes the Secretary of the Interior in his discretion to examine and classify and open to entry, selection, or location under applicable law any lands withdrawn or reserved by Executive Order 6910 of November 26, 1934, or Executive Order 6964 of February 5, 1935, and amendments thereto, or within a grazing district established under that act which he finds are more valuable or suitable for the production of agricultural crops than for the production of native grasses and forage plants, or more valuable or suitable for any other use than for the use provided for under said act, or proper for acquisition in satisfaction of any outstanding lieu, exchange, or scrip rights or land grant. Classification under section 7 is a prerequisite to the approval of all entries, selections, or locations under the following subparts of this chapter, except as they apply to Alaska and with certain other exceptions: Original, Additional, Second, and Adjoining Farm Homesteads—Subpart 2211; Enlarged Homestead—Subpart 2211; Indian Allotments—Subpart 2212; Desert Land Entries—Subpart 2226; Recreation and Public Purposes Act—Subpart 2232; State Grants for Educational, Institutional, and Park Purposes—Subpart 2222; Scrip Selections—Subpart 2221, and Exchanges for the Consolidation or Extension of National Forests, Indian Reservations or Indian Holdings—Subpart 2244.

(b) Section 8(b) of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315g), authorizes the Secretary of the Interior, when public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned lands within or without the boundaries of a grazing district established under that act and in exchange therefor to issue patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the base lands. The regulations governing such exchanges are contained in Subpart 2244 of this chapter.

(c) Section 2455 of the Revised Statutes, as amended (43 U.S.C. 1171), authorizes the Secretary of the Interior in his discretion to order into market and sell at public auction isolated or disconnected tracts of public land not exceeding 1,520 acres, and tracts not exceeding 760 acres the greater part of which are mountainous or too rough for cultivation. The regulations governing such sales are contained in Subpart 2243 of this chapter.

(d) Section 3 of the Act of August 28, 1937 (50 Stat. 875, 43 U.S.C. 1181c), authorizes the Secretary of the Interior to classify, either on application or otherwise, and restore to homestead entry, or purchase under the provisions of section 2455 of the Revised Statutes, as amended, any of the revested Oregon and California Railroad or reconveyed Coos Bay Wagon Road grant land which, in

his judgment, is more suitable for agricultural use than for afforestation, reforestation, stream-flow protection, recreation, or other public purposes. The regulations governing disposal under this act are contained in Subpart 2243 of this chapter.

(e) The Small Tract Act of June 1, 1938 (52 Stat. 609), as amended (43 U.S.C. 682a–e), authorizes the Secretary of the Interior, in his discretion, to lease or sell certain classes of public lands which he classifies as chiefly valuable for residence, recreation, business or community site purposes. The regulations governing leases and sales under this act are contained in Subpart 2233 of this chapter.

(f) The Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741), as amended (43 U.S.C. 869–869–4), requires the Secretary of the Interior, in the exercise of his discretion to make a determination that land is to be used for an established or definitely proposed project, and in the case of Alaska authorizes him to classify certain classes of public lands for lease or sale for recreation or other public purposes. The regulations governing lease and sale of land under this act are contained in Subpart 2232 of this chapter.

(g) The Act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior, in the administration of the Act of August 28, 1937 (supra), in his discretion, to exchange any land formerly granted to the Oregon & California Railroad Co., title to which was revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Co. pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The regulations governing exchanges under this act are contained in Subpart 2244 of this chapter.

(h) The Alaska Public Sales Act of August 30, 1949 (63 Stat. 679), as amended (48 U.S.C. 364a–f), authorizes the Secretary of the Interior in his discretion to classify certain classes of public lands in Alaska for public sale for industrial or commercial purposes. The regulations governing sales of land under this act are contained in Subparts 2241 and 2245 of this chapter.

(i) The Public Land Sale Act of September 19, 1964 (78 Stat. 988, 43 U.S.C. 1421-27), authorizes and directs the Secretary of the Interior to sell public lands in tracts not exceeding 5,120 acres, that have been classified for sale in accordance with a determination that (1) the lands are required for the orderly growth and development of a community or (2) the lands are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development. The regulations governing such sales are contained in Subpart 2243 of this chapter .

(j) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), authorizes the Secretary of the Interior to determine which of the public lands (and other Federal lands), including those situated in the State of Alaska exclusively administered by him through the Bureau of Land Management shall be (1) sold because they are (i) required for the orderly growth and development of a community or (ii) are chiefly valuable for residential, commercial, agricultural (which does not include lands chiefly valuable for grazing or raising forage crops), industrial, or public uses or development or (2) retained, at least for the time being, in Federal ownership and managed for (i) domestic livestock grazing, (ii) fish and wildlife development and utilization, (iii) industrial development, (iv) mineral production, (v) occupancy, (vi) outdoor recreation, (vii) timber production, (viii) watershed protection, (ix) wilderness preservation, or (x) preservation of public values that would be lost if the land passed from Federal ownership.

§ 2410.0–4 Responsibilities.

Except where specified to the contrary in this part, the authority of the Secretary of the Interior to classify lands and make other determinations in accordance with the regulations of this part has been delegated to persons authorized to act in his name; to the Director, Bureau of Land Management and persons authorized to act in his name; to State Directors of the Bureau of Land Management and to any person authorized to act in the name of a State Director.

§ 2410.0–5 Definitions.

As used in the regulations of this part—

(a) "Residential" refers to single or multi-family dwellings or combinations thereof, and related community facilities, both seasonal and year-round.

(b) "Commercial" refers to the sale, exchange, or distribution of goods and services.

(c) "Industrial" refers to the manufacture, processing, and testing of goods and materials, including the production of power. It does not refer to the growing of agricultural crops, or the raising of livestock, or the extraction or severance of raw materials from the land being classified, but it does include activities incidental thereto.

(d) "Agricultural" refers to the growing of cultivated crops.

(e) "Community" refers to a village, town or city, or similar subdivision of a State, whether or not incorporated.

(f) "Domestic livestock" refers to cattle, horses, sheep, goats and other grazing animals owned by livestock operators, provided such operators meet the qualification set forth in § 4111.1–1 or § 4131.1–3 of this chapter. This definition includes animals raised for commercial purposes and also "domestic livestock" within the meaning of § 4111.3–1(d)(1) of this chapter.

(g) "Fish and wildlife" refers to game, fish and other wild animals native or adaptable to the public lands and waters.

(h) "Mineral" refers to any substance that (1) is recognized as mineral, according to its chemical composition, by the standard authorities on the subject, or (2) is classified as mineral product in trade or commerce, or (3) possesses economic value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts.

(i) "Occupancy" refers to use of lands as a site for any type of useful structure whatsoever.

(j) "Outdoor recreation" includes, but is not limited to, hunting, fishing, trapping, photography, horseback riding, picnicking, hiking, camping, swimming, boating, rock and mineral collecting, sightseeing, mountain climbing, and skiing.

(k) "Timber production" refers to the growth of trees in forests and woodlands.

(l) "Watershed protection" refers to maintenance of the stability of soil and soil cover and the control of the natural flow of water.

(m) "Wilderness" refers to areas in a native condition or reverted to a native condition, substantially free of man-made structures and human habitation.

(n) "Public value" refers to an asset held by, or a service performed for, or a benefit accruing to the people at large.

(o) "Multiple use" means the management of the various surface and subsurface resources so that they are utilized in the combination that will best meet the present and future needs of the American people; the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(p) "Sustained yield of the several products and services" means the achievement and maintenance of a high-level annual or regular periodic output of the various renewable resources of land without impairment of the productivity of the land.

§ 2410.1 Criteria.

§ 2410.1–1 General criteria for all land classification.

(a) All classifications under the regulations of this part will give due consideration to ecology, priorities of use, and the relative values of the various resources in particular areas. They must be consistent with all the following criteria:

(1) The lands must be physically suitable or adaptable to the uses or purposes for which they are classified. In addition, they must have such physical and other characteristics as the law may require them to have to qualify for a particular classification.

(2) All present and potential uses and users of the lands will be taken into consideration. All other things being equal, land classifications will attempt to achieve maximum future uses and minimum disturbance to or dislocation of existing users.

(3) All land classifications must be consistent with State and local government programs, plans, zoning, and regulations applicable to the area in which the lands to be classified are located, to the extent such State and local programs, plans, zoning, and regulations are not inconsistent with Federal programs, policies, and uses, and will not lead to inequities among private individuals.

(4) All land classfications must be consistent with Federal programs and policies, to the extent that those programs and policies affect the use or disposal of the public lands.

(b) When, under the criteria of this part, a tract of land has potential for either retention for multiple use management or for some form of disposal, or for more than one form of disposal, the relative scarcity of the values involved and the availability of alternative means and sites for realization of those values will be considered. Long-term public benefits will be weighed against more immediate or local benefits. The tract will then be classified in a manner which will best promote the public interests.

§ 2410.1–2 Retention for multiple use management classification criteria.

In addition to the general criteria in § 2410.1–1, the following criteria will be used to determine whether public lands will be retained, in Federal ownership and managed for domestic livestock grazing, fish and wildlife development and utilization, industrial development, mineral production, occupancy, outdoor recreation, timber production, watershed protection, wilderness preservation, or preservation of public values that would be lost if the land passed from Federal ownership. Lands may be classified for retention under the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), if they are not suitable for disposal under the criteria set forth in § 2410.1–3 and such classification will do one or more of the following:

(a) Assist in effective and economical administration of the public lands in furtherance of the several objectives of such administration as expressed in the various public land laws.

(b) Further the objectives of Federal natural resource legislation directed, among other things towards:

(1) Stabilization and development of the livestock industry dependent upon Federal lands, such as sections 1 and 15 of the Taylor Grazing Act (43 U.S.C. 315 and 315m), and the Alaska Grazing Act (48 U.S.C. 471–471o).

(2) Provision or preservation of adequate areas of public hunting and fishing grounds and public access thereto, and maintenance of habitat and food supplies for the fish and wildlife dependent upon the public lands and maintained under Federal and State programs, such as section 9 of the Taylor Grazing Act (43 U.S.C. 315h) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c).

(3) Fostering the economy of the nation by industrial and mineral development, such as through the materials sales and mineral leasing laws (Group 3000 of this chapter) and the rights-of-way laws (Subpart 2234 of this chapter).

(4) Realization of the beneficial utilization of the public lands through occupancy leases, such as under the Recreation and Public Purposes Act (43 U.S.C. 869–869–4) and the Small Tract Act (43 U.S.C. 682a–682e).

(5) Provision of needed recreation, conservation, and scenic areas and open space (42 U.S.C. 1500–1500e) and assurance of adequate outdoor recreation resources for present and future generations of Americans (16 U.S.C. 460:1 et seq.).

(6) Stabilization of the timber industry and dependent communities and sustained-yield production of timber and other forest products, such as the Materials Sales Act (30 U.S.C. 601–604), and, in connection with management of other Federal lands, the O and C Act (43 U.S.C. 1181a–1181f, 1181g–1181j).

(7) Protection of frail lands, conservation of productive soils and water supplies, and prevention of damage and loss due to excessive runoff, flooding, salination, and siltation, such as the Soil and Moisture Conservation Act (16 U.S.C. 590a et seq.) and § 2 of the Taylor Grazing Act (43 U.S.C. 315a).

(c) Preservation of public values that would be lost if the land passed from Federal ownership (43 U.S.C. 1411–1418) such as where

(1) The lands are needed to protect or enhance established Federal programs, by such means as provision of buffer zones, control of access, maintenance of water supplies, reduction and prevention of water pollution, exclusion of nonconforming inholdings, maintenance of efficient management areas, provision of research areas, and maintenance of military areas or sites for other government activities.

(2) The lands should be retained in Federal ownership pending enactment of Federal legislation, which would affect them.

(3) The lands should be retained in Federal ownership pending their acquisition by a State or local government.

(4) The lands are best suited for multiple use management and require management for a mixture of uses in order to best benefit the general public and such management could not be achieved if the lands were in private ownership.

(5) The lands contain scientific, scenic, historic, or wilderness values which would be lost to the general public if they were transferred out of Federal ownership.

(6) Transfer of the lands would be inconsistent with national objectives for the preservation of natural beauty of the country and the proper utilization of open space.

§ 2410.1–3 Disposal classification criteria.

In addition to the general criteria in § 2410.1–1 the following criteria will govern classifications under the authorities listed in § 2410.03 for sale, selection, grant or other disposal under the Public Land Sale Act (78 Stat. 998, 43 U.S.C. 1421–27) and other laws authorizing the Secretary of the Interior to dispose of public lands. The criteria are set forth in terms of land use classes. Where appropriate, the applicability of specific disposal laws to lands in each use class is discussed.

(a) *General criteria for disposal classification.* The general approach to determine the act under which lands are to be classified and disposed of is as follows:

(1) Consideration under criteria listed in this part will first be given to whether the lands can be classified for retention for multiple use management, for disposal, or for both. If, under these criteria, they could be classified for both, the principles of § 2410.1–1(b) will be applied.

(2) If the lands are found to be suitable for disposal, consideration under the criteria of this part will be given to whether the lands are needed for urban or suburban purposes or whether they are chiefly valuable for other purposes. Lands found to be valuable for public purposes will be considered chiefly valuable for public purposes, except in situations where alternate sites are available to meet the public needs involved.

(b) *Additional criteria for classification of lands needed for urban or suburban purposes.* (1) To be needed for urban or suburban purposes it must be anticipated that a community will embrace the lands within 15 years.

(2) Lands determined to be needed for urban or suburban purposes may be classified for sale pursuant to the Public Land Sale Act as being required for the orderly growth and development of a community, if (i) adequate zoning regulations are in effect and (ii) adequate local governmental comprehensive plans have been adopted.

(3) Lands determined to be needed for urban or suburban purposes may be classified for disposal under any appropriate law other than the Public Land Sale Act, if disposal under such other authority would be consistent with local comprehensive plans, or in the absence of such plans, with the views of local governmental authorities.

(4) Where more than one form of disposal is possible, the authorized officer will select that course of action which will best promote development of the land for urban or suburban purposes.

(c) *Additional criteria for classification of lands valuable for public purposes.* (1) To be valuable for public purposes, lands must be suitable for use by a State or local governmental entity or agency for some non-commercial and non-industrial governmental program or suitable for transfer to a non-Federal interest in a transaction which will benefit a Federal, State, or local governmental program.

(2) Lands found to be valuable for public purposes may be classified for sale pursuant to the Public Land Sale Act as chiefly valuable for public uses or development or for transfer in satisfaction of a State land grant, or for transfer to a State or local governmental agency in exchange for other property, or for transfer to a governmental agency under any applicable act of Congress other than the Recreation and Public Purposes Act (44 Stat. 741), as amended (43 U.S.C. 869–869–4), if (i) the proposed use includes profit activities or if the interested, qualified governmental agency and the authorized officer agree that there is no need for the perpetual dedication of the lands to public uses required by the Recreation and Public Purposes Act, and (ii) in the case of sales under the Public Land Sale Act, adequate zoning regulations exist in the area in which the lands are located.

(3) Lands found to be valuable for public purposes will ordinarily be classified for sale or lease under the Recreation and Public Purposes Act (see Subpart 2232 of this chapter) if the proposed use involves non-profit activities and if it is determined by the authorized officer that the provisions of that Act are required to insure the continued dedication of the lands to such uses, or otherwise to carry out the purposes of the Act.

(4) Lands may be classified for exchange under appropriate authority where they are found to be chiefly valuable for public purposes because they have special values, arising from the interest of exchange proponents, for exchange for other lands which are needed for the support of a Federal program.

(d) *Additional criteria for classification of lands valuable for residential, commercial, agricultural, or industrial purposes.* (1) Lands which have value for residential, commercial, agricultural, or industrial purposes, or for more than one of such purposes, will be considered chiefly valuable for that purpose which represents the "highest and best use" of the lands, i.e., their most profitable legal use in private ownership.

(2) Lands may be classified for sale pursuant to the Public Land Sale Act as being chiefly valuable for residential, commercial, agricultural, or industrial uses or development (other than grazing use or use for raising native forage crops), if (i) adequate zoning regulations are in effect, and, where the lands also are needed for urban or suburban development, (ii) adequate local governmental comprehensive plans have been adopted.

(3) Lands determined to be valuable for residential, commercial, agricultural, or industrial purposes may be classified for disposal under any appropriate authority other than the Public Land Sale Act if (i) disposal under such other authority would be consistent with local governmental comprehensive plans, or (ii) in the absence of such plans, with the views of local governmental authorities.

(4) Lands outside of Alaska may be classified as suitable for homestead entry under Subpart 2211 of this chapter if they are (i) chiefly valuable for agricultural purposes, and (ii) suitable for development as a home and farm for a man and his family, and (iii) the anticipated return from agricultural use of the land would support the residents. If it is determined that the irrigation of land otherwise suitable for homestead entry would endanger the supply of adequate water for existing users or cause the dissipation of water reserves, such land will not be classified for entry. Land may be classified for homestead entry only if rainfall is adequate, or if under State law, there is available to the land sufficient irrigation water, to permit agricultural development of its cultivable portions.

(5) Lands may be classified as suitable for desert land entry under Subpart 2226 of this chapter if (i) the lands are chiefly valuable for agricultural purposes, and (ii) all provisions concerning irrigation water set forth in § 2410.1–3(d)(4) are met.

(6) Lands outside of Alaska may be classified as suitable for Indian allotment under Subpart 2212 of this chapter if (i) the lands are valuable for agricultural purposes, and (ii) the lands are on the whole suitable for a home for an Indian and his family, and (iii) the anticipated return from agricultural use of the land would support the residents, and (iv) the requirements for water supplies set forth in § 2410.1–3(d)(4) are met.

(7) Lands determined to be valuable for purposes other than public purposes may be determined to be suitable for exchange if the acquisition of the offered lands, the disposition of the public lands, and the anticipated costs of consummating the exchange will not disrupt governmental operations.

(e) *Additional criteria for lands valuable for other purposes.* Lands may be classified for disposal under any applicable authority where they are found to be chiefly valuable for purposes other than those described in paragraphs (b) through (d) of this section and to be not suitable for retention for multiple use management.

§ 2410.1–4 Criteria for segregation.

The following criteria will govern the determination of the extent to which classifications and proposed classifications will segregate the affected lands from settlement, location, sale, selection, entry, lease, or other forms of disposal under the public land laws, including the mining and mineral leasing laws. The segregative effect of each classification or proposed classification will be governed by applicable laws and regulations, and will be stated in the classification notice or decision.

(a) *General criterion.* The public lands classified or proposed to be classified under the regulations of this part will be kept open to (i.e., not segregated from) as many forms of disposal as possible consistent with the purposes of the classification and the resource values of the lands.

(b) *Specific criteria for segregative effect or classification for retention.* (1) Public lands classified or proposed to be classified for retention for multiple use management will be segregated from those forms of disposal which, if the lands remained open thereto, could:

(i) Interfere significantly with the management of the lands under principles of multiple use and sustained yield, or

(ii) Impair or prevent, to an appreciable extent, realization of public values in the lands, or

(iii) Impair or prevent, to an appreciable extent, realization of the objectives of retention and management set forth in Part 2410, or

(iv) Lead to unnecessary expenditures of public or private funds arising out of individual efforts to acquire public lands under laws, which are in fact not applicable, because of the nature of the resources of the lands.

(2) In applying the criteria in subparagraph (1) of this paragraph, land shall not be closed to mining location unless the nonmineral uses would be inconsistent with and of greater importance to the public interest than the continued search for a deposit of valuable minerals.

(c) *Specific criteria for segregative effect of classification for disposal.* Public lands classified or proposed to be classified for disposal will be segregated from those forms of disposal which, if the lands remained open thereto, could interfere with the orderly disposal of the lands pursuant to appropriate law. Public lands classified or proposed to be classified for sale under the Public Land Sale Act (78 Stat. 988, 43 U.S.C. 1411–18) will be segregated from all forms of disposal under the mining and mineral leasing laws.

Subpart 2411—Procedures

§ 2411.0–3 Authority.

Classifications and other determinations in accordance with the regulations of this part may be made by the authorized officer whether or not applications or petitions have been filed for the lands.

§ 2411.1 Disposal classification procedure.

§ 2411.1–1 Petition-application system.

(a) *Filing of petition.* (1) When (i) land must be classified or designated pursuant to the authorities cited in § 2410.0–3 before an application may be approved and (ii) the filing of applications is permitted prior to classification, the application together with a petition for classification on a form approved by the Director (hereinafter referred to collectively as a "petition-application") must be filed in accordance with the provisions of § 1821.2 of this chapter. Lists indicating the proper office for filing of applications may be obtained from the Director or any other officer of the Bureau of Land Management. Copies of the petition for classification form and the application forms may be obtained from the land offices or from the Bureau of Land Management, Washington, D.C., 20240.

(b) *Preliminary determination.* Upon the filing of a petition-application, the authorized officer shall make a preliminary determinatoin as to whether it is regular upon its face and, where there is no apparent defect, shall proceed to investigate and classify the land for which it has been filed. No further consideration will be given to the merits of an application or the qualifications of an applicant unless or until the land has been classified for the purpose for which the petition-application has been filed.

(c) *Proposed classification decision.* (1) The State Director shall make and issue a proposed classification decision which shall contain a statement of reasons in support thereof. Such decisions shall be served upon (i) each petitioner-applicant for the land, (ii) any grazing permittee, licensee, or lessee on the land, or his representative, (iii) the District Advisory Board, (iv) the local governing

board, planning commission, State coordinating committee, or other official or quasi-official body having jurisdiction over zoning in the geographic area within which the lands are located, and (v) any governmental officials or agencies from whom the record discloses comments on the classification have been received. If the decision affects more than 2,560 acres and would lead to the disposal of the lands, the decision will also be published in accordance with the provisions of § 2411.1–2.

(2) When there are multiple petition-applications for the same land, the proposed classification decision shall state which petition-application, if any, will be entitled to preference under applicable law; or where no petition-application has been filed for the purpose for which the land is proposed to be classified, the decision shall so state.

(i) When multiple petition-applications have been filed for the same land, the one first filed for the purpose for which the land is classified will be entitled to preference under applicable law.

(ii) When two or more petition-applications have been simultaneously filed for the purpose for which the land is classified, the petition-application entitled to preference will be the first to be selected by drawing.

(iii) If no petition-application has been filed for the purpose for which it is proposed to classify the land, the proposed decision shall state that the land will be opened to application by all qualified individuals on an equal-opportunity basis after public notice.

(d) *Protests: initial classification decision.* (1) For a period of 30 days after the proposed classification decision has been served upon the parties listed in paragraph (c) (1) of this section, protests thereto may be filed by an interested party with the State Director. No particular form of protest is required under this subparagraph, it being the intent of this procedure to afford the State Director the opportunity to review the proposed classification decision in the light of such protests.

(2) If no protests are filed within the time allowed, the proposed classification action shall be issued as the initial classification decision of the State Director, and shall be served on the petitioner-applicants and upon grazing permittees, licensees, or lessees.

(3) If protests are timely filed, they shall be reviewed by the State Director, who may require statements or affidavits, take testimony, or conduct further field investigations as are deemed necessary to establish the facts. At the conclusion of such review, the State Director shall issue an initial classification decision, either revised or as originally proposed, which shall be served on all interested parties.

(e) *Administrative review.* (1) For a period of 30 days after service thereof upon all parties in interest, the initial classification decision of the State Director shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review.

(2) If, 30 days from receipt by parties in interest of the initial decision of the State Director, the Secretary has not either on his own motion, or motion of any protestant, petitioner-applicant, or the State Director, exercised supervisory authority for review, the initial classification decision shall become the final order of the Secretary.

(3) The exercise of supervisory authority by the Secretary shall automatically vacate the initial classification decision and the final Departmental decision shall be issued by the Secretary of the Interior and served upon all parties in interest.

(4) No petitioner-applicant or protestant to a proposed classification decision of a State Director to whom the provisions of this section are applicable shall be entitled to any administrative review other than that provided by this section or to appeal under provisions of Parts 1840 and 1850 of this chapter.

(f) *Effect of final order.* (1) A final order of the Secretary shall continue in full force and effect so long as the lands remain subject to classification under the authorities cited in Subpart 2410 until an authorized officer revokes or modifies it. Until it is so revoked or modified, all applications and petition-applications for the lands not consistent with the classification of the lands will not be allowed. Any payments submitted therewith will be returned. If the order is revoked or modified, the land will be opened to entry on an equal-opportunity basis after public notice in accordance with applicable regulations for the purpose for which it may be classified.

(2) Nothing in this section, however, shall prevent the Secretary of the Interior, personally and not through a delegate, from vacating or modifying a final order of the Secretary. In the event that the Secretary vacates or modifies a final order within sixty days of the date it became final, any preference right of a petitioner-applicant will be restored.

§ 2411.1–2 Special procedures where proposed disposal classification exceeds 2,560 acres.

(a) *Authority.* Section 2 of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1412), requires the Secretary of the Interior to take certain actions when he proposes the classification for sale or other disposal under any statute of a tract of land in excess of 2,560 acres.

(b) *Publication of notice of, and public hearings on, proposed classification.* The authorized officer shall publish a notice of his proposed classification in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected land. The notice shall include the legal description of the affected land, the law or laws under which the lands would be disposed of together with such other information as the authorized officer deems pertinent. Copies of the notice will be sent to the head of the governing body of the political subdivision of the State, if any, hav-

ing jurisdiction over zoning in the geographic area within which the affected lands are located, the governor of that State and the BLM multiple use advisory board in that State, the land-use planning officer and land-use planning committees, if any, of the county, in which the affected lands are located, the authorized user or users of the lands or their selected representatives, all petitioner-applicants involved, and any other party the authorized officer determines to have an interest in the proper use of the lands. The authorized officer will hold a public hearing on the proposal if (1) the proposed classification will affect more than 25,000 acres or (2) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

(c) *Publication of notice of classification.* After having considered the comments received as the result of publication, the authorized officer may classify the lands any time after the expiration of sixty days following the publication of the proposed classification in the FEDERAL REGISTER. The authorized officer shall publicize the classification in the same manner as the proposed classification was publicized, indicating in the notice the differences, if any, between the proposed classification and the classification.

(d) *Administrative review.* For a period of 30 days after publication in the FEDERAL REGISTER of a notice of classification for disposal pursuant to paragraph (c) of this section, the classification shall be subject to the exercise of supervisory authority by the Secretary of the Interior for the purpose of administrative review. If, 30 days from date of publication, the Secretary has neither on his own motion, on motion of any protestant or the State Director, exercised supervisory authority for review, the classification shall become the final order of the Secretary. The exercise of supervisory authority by the Secretary shall automatically vacate the classification and reinstate the proposed classification together with its segregative effect. In this event the final departmental decision shall be issued by the Secretary and published in the FEDERAL REGISTER.

(e) *Segregative effect of publication.* (1) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to paragraph (b) of this section or of a notice of classification pursuant to paragraph (c) of this section will segregate the affected land from all forms of disposal under the public land laws, including the mining laws except the form or forms of disposal for which it is proposed to classify the lands. However, publication will not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral and vegetative resources, other than under the mining laws.

(2) The segregative effect of a proposed classification will terminate in one of the following ways:

(i) Classification of the lands within two years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(ii) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(iii) An Act of Congress;

(iv) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411–18), or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(3) The segregative effect of a classification for sale or other disposal will terminate in one of the following ways:

(i) Disposal of the lands;

(ii) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(iii) An Act of Congress;

(iv) Expiration of 2 years from the date of publication of the proposed classification without disposal of the land and without the notice of proposed continuance as prescribed by the Classification and Multiple Use Act; or

(v) Expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

§ 2411.1–3 Right to occupy or settle.

The filing of a petition-application gives no right to occupy or settle upon the land. A person shall be entitled to the possession and use of land only after his entry, selection, or location has been allowed, or a lease has been issued. Settlement on the land prior to that time constitutes a trespass.

§ 2411.1–4 Preference right of petitioner-applicant.

Where public land is classified for entry under section 7 of the Taylor Grazing Act or under the Small Tract Act pursuant to a petition-application filed under this part, the petitioner-applicant is entitled to a preference right of entry, if qualified. If, however, it should be necessary thereafter for any reason to reject the application of the preference right claimant, the next petitioner-applicant in order of filing shall succeed to the preference right. If there is no other petitioner-applicant the land may be opened to application by all qualified individuals on an equal-opportunity basis after public notice or the classification may be revoked by the authorized officer.

§ 2411.1–5 Opening of lands to disposal.

After lands have been classified for disposal, the authorized officer shall, at the appropriate time, open the lands to those forms of disposal consistent with the classification.

§ 2411.1–6 Allowance and entry.

(a) After lands are classified pursuant to the regulations of this part, and

opened for entry or other disposal, all the laws and regulations governing the particular kind of entry, location, selection, or other disposal must be complied with in order for title to vest or other interests to pass.

(b) After lands are classified for disposal under the regulations of this Subpart, the lands shall be offered for sale or other disposal consistent with the classification. If a petitioner-applicant does not have a preference right under § 2411.1–4, the lands shall be opened on an equal-opportunity basis.

§ 2411.2 Procedure for retention for multiple use management classifications.

Formal action to classify land for retention for multiple use management will be governed by the following procedures.

(a) Proposed classifications will be clearly set forth on a map by the authorized officer, and on the Land Office records. Notice of proposed classifications involving more than 2,560 acres will be, and those involving 2,560 acres or less may be, published in the FEDERAL REGISTER and an announcement in a newspaper having general circulation in the area or areas in the vicinity of the affected lands. Notice of the proposals will be sent to authorized users, licensees, lessees, and permittees, or their selected representatives, the head of the governing body of the political subdivision of the State, if any, having jurisdiction over zoning in the geographic area in which the lands are located, the governor of that State, the BLM multiple use advisory board in that State, and the District advisory board and to any other parties indicating interest in such classifications. The notice will indicate where and when the map and Land Office records may be examined. The notice will specifiy the general location of the lands, the acreage involved, and the extent to which the land is proposed to be segregated from settlement, location, sale, selection, entry, lease, or other form of disposal under the public land laws, including the mining and mineral leasing laws. The notice of proposed classification will specify the period during which comments will be received, which will not be less than 60 days from date of publication of the notice. The authorized officer will hold a public hearing on the proposal if (1) the proposed classification will affect more than 25,000 acres or (2) he determines that sufficient public interest exists to warrant the time and expense of a hearing.

(b) Not less than 60 days after publication of the proposed classification, a classification will be made by the authorized officer, and a notice of classification published in the FEDERAL REGISTER and recorded in the Land Office records and on a map which will be filed in the local BLM District Office. Such map will be available for public inspection.

(c) For a period of 30 days after publication of the classification in the FEDERAL REGISTER, the classification shall be subject to the exercise of administrative review and modification by the Secretary of the Interior.

(d) Classifications may be changed, using the procedures specified in this subpart.

(e) Segregative effect of classifications and proposed classifications:

(1) Publication in the FEDERAL REGISTER of a notice of proposed classification pursuant to paragraph (a) of this section or of a notice of classification pursuant to paragraph (b) of this section will segregate the affected land to the extent indicated in the notice.

(2) The segregative effect of a proposed classification will terminate in one of the following ways:

(i) Classification of the lands within 2 years of publication of the notice of proposed classification in the FEDERAL REGISTER;

(ii) Publication in the FEDERAL REGISTER of a notice of termination of the proposed classification;

(iii) An Act of Congress;

(iv) Expiration of a 2-year period from the date of publication of the notice of proposed classification without continuance as prescribed by the Classification and Multiple Use Act, or expiration of an additional period, not exceeding 2 years, if the required notice of proposed continuance is given.

(3) The segregative effect of a classification for retention will terminate in one of the following ways:

(i) Reclassification of the lands for some form of disposal;

(ii) Publication in the FEDERAL REGISTER of a notice of termination of the classification;

(iii) An Act of Congress;

(iv) Expiration of the authority for classification.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 5, 1965.

[F.R. Doc. 65–10787; Filed, Oct. 8, 1965; 8:45 a.m.]

GPO 853-435

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

Circular No. 2202

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

CANALS, DITCHES, AND RESERVOIRS FOR IRRIGATION

Basis and purpose. Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by Revised Statute 2478 (43 U.S.C. 1201), 43 CFR Subpart 2234 is amended as set forth below.

The purpose of this amendment is to limit the availability of rights-of-way over and across Federal lands for the purpose of bringing new lands into agricultural development in view of the inadequacy of the water supply available from the Colorado River to meet long-term needs in California and the fact that existing agricultural uses of Colorado River water in California crowd or exceed the 3,850,000 acre-feet of Colorado River water embraced in the three California agricultural priorities under the Seven Party California-Colorado River water agreement.

The amendment provides that no rights-of-way for canals and ditches for irrigation purposes under the Act of March 3, 1891, as amended, will be allowed over federally owned lands in Imperial and Riverside Counties, Calif., where the Colorado River is the source of the water supply.

Since this regulation relates to public property of the United States, it is exempt from the rulemaking requirement of section 4 of the Administrative Procedure Act (60 Stat. 237). Although it is nevertheless customary for the Department of the Interior to publish its rules in proposed form, the public interest requires that this regulation become effective immediately upon publication in the FEDERAL REGISTER.

1. Section 2234.3–1 is amended by adding a new paragraph as follows:

§ 2234.3–1 For Irrigation (Act of March 3, 1891, as amended).

* * * * *

(d) *Rights-of-way not allowed on certain lands.* (1) In *Hugh S. Ritter, Thomas M. Bunn* (A–30415), decided February 24, 1965, the Under Secretary of the Interior ruled that "it would be contrary to the public interest at this time to increase the pressure on the inadequate water supply available for use in California from the Colorado River by classifying * * * public lands as available for disposition under the desert land law." The lands referred to were in Imperial and Riverside Counties, Calif.

(2) For the reasons stated in the Ritter-Bunn decision, supra, it is contrary to the public interest to permit the use of federally owned lands within Imperial and Riverside Counties for the construction of canals and ditches in order to effect agricultural reclamation with water from the Colorado River of desert lands in those counties. Therefore, no applications for rights-of-way for this purpose under the provisions of the Act of March 3, 1891, as amended, will be allowed or permitted on federally owned lands within Imperial and Riverside Counties, Calif., unless the applicant shows that the water to be carried is from a source other than the Colorado River.

STEWART L. UDALL,
Secretary of the Interior.

NOVEMBER 26, 1965.

[F.R. Doc. 65–12831; Filed, Nov. 29, 1965; 8:50 a.m.]

Published in 30 F.R. 14800, November 30, 1965 - Effective upon publication.

Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TRUST MANAGEMENT

[3800]

[Circular No. 2202]

PART 2230—SPECIAL USES

Subpart 2232—Right-of-Way

CANALS, DITCHES, AND RESERVOIRS FOR IRRIGATION

Title 43—PUBLIC LANDS: INTERIOR

Subtitle A—Office of the Secretary of the Interior

[Circular 2203]

PART 19—WILDERNESS PRESERVATION

Part 19, consisting of Subparts A and B, is added to read as follows:

Subpart A—National Wilderness Preservation System

Sec.
19.1 Scope and purpose.
19.2 Definitions.
19.3 Reviews of roadless areas and roadless islands.
19.4 Liaison with other governmental agencies and submission of views by interested persons.
19.5 Hearing procedures.
19.6 Regulations respecting administration and uses of wilderness areas under the jurisdiction of the Secretary.
19.7 Private contributions and gifts.
19.8 Prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness.

Subpart B—Wilderness Preservation of Lands Exclusively Administered Through the Bureau of Land Management

19.25 Retention and management of certain classes of public lands for wilderness preservation.

Subpart A—National Wilderness Preservation System

§ 19.1 Scope and purpose.

This subpart sets forth sections dealings with the administration by the Department of the Interior of certain provisions of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131–1136).

§ 19.2 Definitions.

As used in this subpart the term:

(a) "National Forest Wilderness" means an area or part of an area of national forest lands designated by the Wilderness Act or by a subsequent act of Congress as a wilderness area.

(b) "National Park System" means all federally owned or controlled areas administered by the Secretary through the National Park Service.

(c) "National Wilderness Preservation System" means the federally owned areas designated by the Wilderness Act or subsequent acts of Congress as wilderness areas.

(d) "National Wildlife Refuge System" means those lands and waters administered by the Secretary as wildlife refuges, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any statute, proclamation, executive order, or public land order.

(e) "Roadless area" means a reasonably compact area of undeveloped Federal land which possesses the general characteristics of a wilderness and within which there is no improved road that is suitable for public travel by means of four-wheeled, motorized vehicles intended primarily for highway use.

(f) "Roadless island" means a roadless area that is surrounded by permanent waters or that is markedly distinguished from surrounding lands by topographical or ecological features such as precipices, canyons, thickets, or swamps.

(g) "Secretary" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(h) "Wilderness" means a wilderness as defined in section 2(c) of the Wilderness Act.

§ 19.3 Reviews of roadless areas and roadless islands.

(a) The Secretary is required by section 3(c) of the Wilderness Act to review every roadless area of 5,000 contiguous acres or more in each unit of the National Park System and every roadless area of 5,000 contiguous acres or more and every roadless island in the national wildlife refuges and game ranges of the National Wildlife Refuge System, which was under the supervision of the Secretary on September 3, 1964. The Secretary is further required to recommend to the President whether each such area and island is suitable or not suitable for preservation as wilderness. Reports and recomendations must be submitted by the Secretary in time to permit the President to advise the Congress of his recommendations thereon:

(1) Covering not less than one-third of such areas and islands by September 3, 1967;

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(2) Covering not less than an additional one-third by not later than September 3, 1971; and

(3) Covering the remainder by not later than September 3, 1974.

(b) The primary objective of the Department of the Interior's review of roadless areas and roadless islands pursuant to section 3(c) of the Wilderness Act and the regulations of this Part shall be to identify and recommend for preservation as wilderness, by inclusion in the National Wilderness Preservation System, those areas which, after consideration of all relevant factors, it is concluded will achieve the policy of the Congress, as expressed in section 2(a) of the Wilderness Act.

(c) Nothing in the sections of this part shall, by implication or otherwise, be construed to lessen the authority of the Secretary with respect to the maintenance of roadless areas within units of the National Park System or the maintenance of roadless areas and islands within units of the National Wildlife Refuge System.

§ 19.4 Liaison with other governmental agencies and submission of views by interested persons.

(a) When a review is initiated under the provisions of section 3(c) of the Wilderness Act and the sections of this part, arrangements shall be made for appropriate consideration of problems of mutual concern with other Federal agencies and with regional, State, and local governmental agencies.

(b) Any person desiring to submit recommendations as to the suitability or nonsuitability for preservation as wilderness of any roadless area in any unit of the National Park System, or of any such area or any roadless island in any unit of the National Wildlife Refuge System, may submit such recommendations at any time to the superintendent or manager in charge of the unit. Such recommendations will be accorded careful consideration and shall be forwarded with the report of review to the Office of the Secretary.

§ 19.5 Hearing procedures.

(a) Before any recommendation of the Secretary concerning the suitability or nonsuitability of any roadless area or island for preservation as wilderness is submitted to the President, a public hearing or hearings shall be held thereon at a location or locations convenient to the area or areas affected. If the lands involved are located in more than one State, at least one such hearing shall be held in each State. At least 60 days before the date of any such hearing, public notice thereof shall be published in the FEDERAL REGISTER and in newspapers of general circulation in the area. The public notice shall contain or make reference to a map of the lands involved and a definition of boundaries and a statement of the action proposed to be taken by the Secretary thereon.

(1) Any hearing held under this section shall be presided over by a hearing officer designated by the Secretary.

(2) Any person may present testimony at the hearing orally or in writing, or both, by notification to the hearing officer in accordance with the published notice of the hearing. Witnesses shall not be subjected to cross-examination but the hearing officer may invite responses by witnesses to questions he may ask for the purpose of clarifying the testimony presented.

(3) The witnesses shall not be sworn, but statements made by them orally or in writing are subject to the provisions of 18 U.S.C. 1001, which makes it a crime for any person knowingly and willfully to make to any agency of the United States any false, fictitious, or fraudulent statement as to any matter within its jurisdiction.

(4) A verbatim record of the hearing shall be kept.

(5) The hearing officer may be instructed by the Secretary to prepare and submit a recommendation concerning the suitability or nonsuitability of the area or areas for preservation as wilderness.

(6) A copy of the transcript of the hearing record, and of any recommendation made by the hearing officer as a result thereof, shall, during the pendency of the subject matter, be maintained for public examination (i) in an office of the Department of the Interior convenient to the area or areas affected, and (ii) in the headquarters office of the Department in Washington, D.C.

(7) The Secretary reserves the right at all times to consider information available to his office from any source, not limited to the record of the public hearing or hearings, in the further consideration of proposed recommendations concerning the suitability or the nonsuitability of the area or areas for preservation as wilderness.

(b) At least 30 days before the date of any such public hearing, the hearing officer shall advise the Governor of each State and the governing board of each county, or in Alaska the borough, in which the lands are located, and the other Federal departments and agencies concerned, and invite such officials and agencies to submit their views at the hearing. The Governor, the governing board, and the other Federal agencies may also submit views following the hearing but such views must be received in the Office of the Secretary by no later than 30 days following the date of the hearing to assure that they will receive consideration.

(c) Any public views received pursuant to the provisions of this section will be accorded careful consideration and a summary thereof shall be forwarded with the recommendations of the Secretary to the President with respect to the area under consideration.

§ 19.6 Regulations respecting administration and uses of wilderness areas under jurisdiction of the Secretary.

Regulations respecting administration and use of areas under the jurisdiction of the Secretary which may be designated as wilderness areas by statute shall be developed with a view to protecting

such areas and preserving their wilderness character for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, with inconsistent uses held to a minimum.

§ 19.7 Private contributions and gifts.

(a) The Secretary is authorized by section 6(b) of the Wilderness Act to accept on behalf of the United States private contributions and gifts to be used to further the purposes of the act. The Secretary, under the authorization of section 6(b), may accept on behalf of the United States any sums of money, marketable securities or other personal property (but not real property) to be used for such things as expediting reviews of roadless areas and islands under his jurisdiction, expediting mineral resource surveys of National Forest Wilderness, or fostering public information and research related to wilderness preservation.

(b) Anyone desiring to make a contribution or gift under the provisions of this section may submit an offer to the Secretary of the Interior, Washington, D.C., 20240, stating the amount of money or describing the securities or other personal property involved. If the offer involves property other than cash, the statement should set forth that the offeror is the owner of the property free and clear of all encumbrances and adverse claims. The offeror may specify a particular purpose for which the offer is made, but the Secretary may in his discretion reject any offer entailing purposes, terms, or conditions unacceptable to him.

(c) Sums of money and marketable securities received under this section that are not otherwise restricted and are allocated to furthering the purposes of the Wilderness Act as it relates to lands within the National Park System shall be transferred to a special account in the National Park Trust Fund and shall be administered in accordance with the provisions of 36 CFR Part 9.

(d) Offers of gifts of land to promote the purposes of a grazing district or facilitate administration of public lands, including preservation and management of wilderness, values, may be tendered to the Secretary under the provisions of section 8(a) of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272) as amended (43 U.S.C. 315g). Offers of gifts of land or interests in land to facilitate administration or contribute to improvement, management, use, or protection of public lands and their resources, including the preservation and management of wilderness values, may be tendered to the Secretary under the provisions of section 103(a) of the Public Land Administration Act of July 14, 1960 (74 Stat. 506; 43 U.S.C. 1364). Persons desiring to make such offers should follow the procedures established by 43 CFR Subpart 2111.

(e) Under the provisions of the Act of June 5, 1920 (41 Stat. 917; 16 U.S.C. 6), the Secretary is authorized, in his discretion, to accept donations of patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments for the purposes of the National Park System. Persons desiring to offer lands, rights-of-way, or buildings under the provisions of the Act of June 5, 1920, should make inquiry of the superintendent of the national park or monument within which the property is located.

§ 19.8 Prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness.

Regulations issued under the provisions of the Wilderness Act pertaining to prospecting, mineral locations, mineral patents, and mineral leasing within National Forest Wilderness are contained in Parts 3327 and 3638 of Subchapter C of Chapter II of this Title.

Subpart B—Wilderness Preservation of Lands Exclusively Administered Through the Bureau of Land Management

§ 19.25 Retention and management of certain classes of public lands for wilderness preservation.

(a) Section 1(a) of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. 1411–1418) directs the Secretary, among other things, to develop and promulgate regulations containing criteria under which he will determine which of the public lands and other Federal lands administered by the Secretary exclusively through the Bureau of Land Management shall be retained in Federal ownership, at least until June 30, 1969, and managed for certain purposes. Section 3 of the same Act directs the Secretary to develop and administer for multiple use and sustained yield of the several products and services obtainable therefrom those public lands he determines to be suitable for interim management in accordance with such regulations. Among the uses listed in the Act for which lands retained in Federal ownership are authorized to be managed is wilderness preservation.

(b) Sections issued under the authority of the Act of September 19, 1964, are contained in Parts 2410 and 2411 of Subchapter B of Chapter II of this Title.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 17, 1966.

[F.R. Doc. 66–1871; Filed, Feb. 21, 1966; 8:50 a.m.]

GPO 856-110

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular 2204]

PART 3320—ACTS CONCERNING LIMITED AREAS

Subpart 3327—Prospecting and Mineral Leasing Within National Forest Wilderness

PART 3630—AREAS SUBJECT TO SPECIAL MINING LAWS

Subpart 3638—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

Subpart 3327—Prospecting and Mineral Leasing Within National Forest Wilderness

Sec.

3327.1 Scope and purpose.
3327.2 Definition.
3327.3 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.
3327.4 Mineral leases, licenses, and permits within National Forest Wilderness.
3327.5 Withdrawal from mineral leasing.

§ 3327.1 Scope and purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral leases, licenses, and permits within National Forest Wilderness.

§ 3327.2 Definition.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest land designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3327.3 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with applications for mineral leases, licenses, or permits on lands which may be open to such applications, attention is directed to the fact that no such applications will be granted after December 31, 1983.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3327.4 Mineral leases, licenses, and permits within National Forest Wilderness.

(a) Until midnight, December 31, 1983, all laws pertaining to mineral leasing and the regulations of this chapter pertaining thereto effective during such period, shall, to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(b) All mineral leases, licenses, and permits covering lands within National Forest Wilderness, issued on or after September 3, 1964, shall contain such stipulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act for the protection of the wilderness character of the lands consistent with the use of the lands for the purposes for which they are leased, licensed, or permitted. In

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addition to containing such stipulations as may be prescribed by the Secretary of Agriculture, any mineral lease, license, or permit covering lands within National Forest Wilderness shall contain a provision that it is issued subject to the provisions of the Wilderness Act and the regulations issued thereunder.

(c) All persons seeking or holding a mineral lease, license, or permit covering lands within National Forest Wilderness, issued on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the applicable regulations of the Secretary of Agriculture.

§ 3327.5 Withdrawal from mineral leasing.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from leasing by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

Subpart 3638 is added to read as follows:

Subpart 3638—Prospecting, Mineral Locations, and Mineral Patents Within National Forest Wilderness

Sec.

3638.1 Scope and purpose.
3638.2 Definition.
3638.3 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.
3638.4 Mineral locations within National Forest Wilderness.
3638.5 Mineral patents within National Forest Wilderness.
3638.6 Withdrawal from operation of the mining laws.

§ 3638.1 Scope and purpose.

This subpart sets forth procedures to be followed by persons wishing to prospect on lands within National Forest Wilderness, and special provisions pertaining to mineral locations and mineral patents within National Forest Wilderness.

§ 3638.2 Definition.

As used in this subpart the term "National Forest Wilderness" means an area or part of an area of National Forest lands designated by the Wilderness Act as a wilderness area within the National Wilderness Preservation System.

§ 3638.3 Prospecting within National Forest Wilderness for the purpose of gathering information about mineral resources.

(a) The provisions of the Wilderness Act do not prevent any activity, including prospecting, within National Forest Wilderness for the purpose of gathering information about mineral or other resources if such activity is conducted in a manner compatible with the preservation of the wilderness environment. While information gathered by prospecting concerning mineral resources within National Forest Wilderness may be utilized in connection with the location of valuable mineral deposits which may be discovered through such activity and which may be open to such location, attention is directed to the fact that no claim may be located after midnight, December 31, 1983, and no valid discovery may be made after that time on any location purportedly made before that time.

(b) All persons wishing to carry on any activity, including prospecting, for the purpose of gathering information about mineral or other resources on lands within National Forest Wilderness should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing surface use of the lands for such activity.

§ 3638.4 Mineral locations within National Forest Wilderness.

(a) Until midnight, December 31, 1983, the mining laws of the United States and the regulations of this chapter pertaining thereto, including any amendments thereto effective during such period, shall to the same extent as applicable before September 3, 1964, extend to National Forest Wilderness, subject to the provisions of such regulations as may be prescribed by the Secretary of Agriculture pursuant to section 4(d)(3) of the Wilderness Act.

(b) All mineral locations established after September 3, 1964, and lying within the National Forest Wilderness, shall be held and used solely for mining or processing operations and uses incident thereto, and such locations shall carry with them no rights in excess of those rights which may be patented under the provisions of § 3638.5 of this chapter.

(c) All persons wishing to carry on any activity under the mining laws on lands within National Forest Wilderness, on or after September 3, 1964, should make inquiry of the officer in charge of the National Forest in which the lands are located concerning the regulations of the Secretary of Agriculture governing activities to be performed thereon in connection with the locations of mining claims.

§ 3638.5 Mineral patents within National Forest Wilderness.

(a) Each patent issued under the U.S. mining laws for mineral locations established after September 3, 1964, or validated by discovery of minerals occurring after September 3, 1964, and lying within National Forest Wilderness shall, in accordance with the provisions of section 4(d)(3) of the Wilderness Act:

(1) Convey title to the mineral deposits within the patented lands, together with the right to cut and use so much of the mature timber therefrom as may be needed in the extraction, removal, and beneficiation of the mineral deposits, if needed timber is not otherwise reasonably available, and if the timber is cut under sound principles of forest management as defined by the National Forest rules and regulations;

(2) Reserve to the United States all title in or to the surface of the lands and products thereof; and

(3) Provide that no use of the surface of the patented lands or the resources therefrom not reasonably required for carrying on mining or prospecting shall be allowed except as expressly provided in the Wilderness Act.

(b) Each patent to which the provisions of this section are applicable shall contain the express condition that the use of the patented lands shall be subject to regulations prescribed by the Secretary of Agriculture as referred to in § 3638.4(a) of this subpart and that the patented lands shall be held open for reasonable inspection by authorized officers of the U.S. Government for the purpose of observing compliance with the provisions thereof.

§ 3638.6 Withdrawal from operation of the mining laws.

Effective at midnight, December 31, 1983, subject to valid rights then existing, the minerals in lands within National Forest Wilderness are withdrawn from the operation of the mining laws by virtue of the provisions of section 4(d)(3) of the Wilderness Act.

STEWART L. UDALL,
Secretary of the Interior.

FEBRUARY 17, 1966.

[F.R. Doc. 66-1870; Filed, Feb. 21, 1966; 8:50 a.m.]

GPO 856-111

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2205]

PART 3220—LEASING UNDER THE REORGANIZATION ACT AND OTHER ACTS

Subpart 3220—Leasing Under the Reorganization Act and Other Acts; General

Sec.
3220.0–3 Authority.
3220.0–6 Scope.
3220.0–7 Outstanding prospecting permits and leases.

Subpart 3221—Prospecting Permits

3221.1 Filing and contents of applications; filing fees; acreage limitation; qualifications; priority rights.
3221.2 Terms and conditions of prospecting permits; rental; bonds.
3221.3 Extension of permit.
3221.4 Reward for discovery; preference right lease; bond.

Subpart 3222—Competitive Leasing

Sec.
3222.1 Mineral deposits subject to lease through competitive bidding; leasing units.
3222.2 Application for lease by competitive bidding.
3222.3 Notice of lease offer.
3222.4 Bidding requirements; deposits.
3222.5 Action by successful bidder.
3222.6 Rentals.
3222.6–1 Payments and reports.
3222.6–2 Suspension of operations and production.
3222.7 Bonds.

Subpart 3223—Contracts

3223.1 Approval of operating or development contracts without regard to acreage limitations.

Subpart 3224—Relinquishment of Prospecting Permit or Lease

3224.1 Surrender.
3224.2 Cancellation or termination of prospecting permit or lease.

Subpart 3225—Transfers

3225.1 Transfers, including subleases.

Subpart 3226—Royalties

3226.1 Overriding royalties.

Subpart 3227—Fractional or Future Interest Leases and Permits

3227.1 Terms and conditions.
3227.2 Present fractional interest leases or permits.
3227.3 Future or fractional future interest leases.
3227.4 Rejection and termination of applications.

Subpart 3220—Leasing Under the Reorganization Act and Other Acts; General

§ 3220.0–3 Authority.

(a) Section 402, Reorganization Plan No. 3 of 1946 (60 Stat. 1099) transferred the functions of the Secretary of Agriculture and the Department of Agriculture relative to the leasing or other disposal of minerals in certain acquired lands to the Secretary of the Interior.

(b) Section 3 of the act of September 1, 1949 (63 Stat. 683) authorized the issuance of mineral leases or permits for the exploration, development and utilization of minerals, other than those cov-

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ered by the Mineral Leasing Act for Acquired Lands, in certain lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83).

(c) Section 3 of the act of June 23, 1952 (66 Stat. 285), authorized the Secretary of the Interior to administer, in the manner prescribed by section 402 of Reorganization Plan No. 3 of 1946, mineral deposits other than those subject to the provisions of the Mineral Leasing Act for Acquired Lands, in that part of the Juan Jose Lobato Grant Numbered 164, which lies northerly of the Chama River (North Lobato tract) and in part of the Anton Chica Grant Numbered 29 (El Pueblo tract) as more particularly described in section 1 of the act of June 28, 1952.

§ 3220.0–6 Scope.

(a) Part 3220 applies to the leasing or other disposal of minerals other than oil, gas, oil shale, coal, phosphate, potassium, sodium and sulphur.

(1) In acquired lands under the act of March 4, 1917 (39 Stat. 1134, 1150; 16 U.S.C. 520), Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 195, 200, 202, 205; 40 U.S.C. 401, 403(a) and 408), the 1935 Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115, 118), section 55 of Title I of the act of August 24, 1935 (49 Stat. 750, 781), the act of July 22, 1937 (50 Stat. 522, 525, 530), as amended July 28, 1942 (56 Stat. 725; 7 U.S.C. 1011(c) and 1018).

(2) In acquired lands, except Indian lands and lands in national parks and monuments, under the jurisdiction of the bureaus of the Department of the Interior where authorized by law.

(3) In those lands added to the Shasta National Forest by the act of March 19, 1948 (62 Stat. 83), which were acquired with funds of the United States, or lands received in exchange therefor.

(4) In those portions of the Juan Jose Lobato Grant (North Lobato tract) and of the Anton Chica Grant (El Pueblo tract) in New Mexico, mentioned in paragraph (c) of this section.

(b) Lands under jurisdiction of the Department of Agriculture. The Reorganization Plan and the Acts provide that mineral development may be permitted only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe to protect the purposes for which the lands were acquired or are being administered. An application will be rejected if the Secretary of Agriculture does not give his consent. Any lease permit, or other instrument granting the right to mine or remove the minerals will contain such stipulations as may be specified by that official in order to protect such purposes. All matters relating to the surface of the land and its protection, including responsibility for securing compliance with all applicable regulations and procedures of the Department of Agriculture, the terms of the lease relating to the surface and surface resources, and the stipulations specified for the protection of the land, are functions of the Department of Agriculture. Lessees and permittees will comply with the applicable regulations of the Secretary of Agriculture and will consult with the authorized respresentative of the Secretary of Agriculture as to matters relating to the surface.

§ 3220.0–7 Outstanding prospecting permits and leases.

Prospecting permits and leases heretofore issued by the Department of Agriculture will continue to be administered by the Department of the Interior in accordance with the regulations under which they were issued.

Subpart 3221—Prospecting Permits

§ 3221.1 Filing and contents of applications; filing fees; acreage limitation; qualifications; priority rights.

(a) While there is no required form for an application for a prospecting permit or lease, a form approved by the Director may be used for that purpose. If not, the application should:

(1) Specify the dominant mineral or minerals for which the lease or permit is sought;

(2) Name, if practicable, the branch of the Government agency having jurisdiction over the land and the administrative unit or project of which the land is a part;

(3) Contain a statement of applicant's citizenship; if a corporation, the State of incorporation and that it is authorized to hold a prospecting permit or lease, and a statement that applicant's interests, direct or indirect, in leases, prospecting permits or applications for minerals other than coal, phosphate, sodium, potassium, oil, oil shale, or gas in acquired lands in the same State, do not exceed the allowable acreage prescribed in paragraph (c) of this section.

(4) Contain a complete and accurate description of the lands for which the prospecting permit or lease is desired. If the lands have been surveyed under the rectangular system of public land surveys, and the description can be conformed to such survey system, the lands must be described by legal subdivision, section, township, and range. Where the description cannot be conformed to the public land survey, any boundaries which do not so conform must be described by metes and bounds, giving courses and distances between successive angle points with appropriate ties to established survey corners. If not so surveyed and if within the area of the public land surveys the lands must be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connected with an official corner of those surveys by courses and distances. If not so surveyed and the tract is not within the area of the public land survey, it must be described in a manner consistent with the description in the deed under which it was acquired, amplified where the deed description does not supply them, to include the courses and distances between the successive angle points on the boundary of the tract, and adequately shown on a plat or map to permit its location within the administrative unit or project of which it is a part. Lands "within the area of the public land surveys" are those north and west of the Ohio and Mississippi Rivers (except Texas) and in the States of Mississippi, Alabama, Florida, and Alaska.

(5) Include an accurate map or plat of the lands prepared from the survey thereof or other reliable map source, unless the lands are surveyed under the public land system of surveys.

(b) An application for a prospecting permit or lease may be filed by any citizen or association of citizens of the United States, or corporations organized and existing under the laws of the United States or any State or Territory thereof.

(1) The application shall be filed in triplicate in the appropriate land office. The application must be accompanied by a filing fee of $10 which is not returnable.

(2) An application for a prospecting permit must be accompained by full payment of the first year's rental of 25 cents per acre or fraction thereof, but no less than $20.

(c) No applicant may hold more than 20,480 acres under prospecting permit and lease of which not more than 10,240 acres may be held under lease, provided, however, that the Secretary may authorize a lessee to hold under lease an additional 10,240 acres of land if he finds, upon a satisfactory showing submitted by the lessee that such additional acreage is necessary to promote the orderly development of mineral resources and does not result in undue control of the mineral to be mined, removed and marketed, but in no event shall a lessee hold in excess of 10,240 acres of leased land for the mining of any dominant single mineral, nor shall any person at any one time hold more than 20,480 acres under permit and lease in any one State.

(d) A prospecting permit may not include more than 2,560 acres, and will be issued to the first qualified applicant. The lands in the permit must be entirely within an area of six miles square or within an area not exceeding six surveyed sections in length or width. An application for a prospecting permit which covers lands that are not located entirely within an area of six miles square or an area of six surveyed sections in length or width will be rejected in its entirety.

§ 3221.2 Terms and conditions of prospecting permits; rental; bonds.

(a) Prospecting permits are issued on a form approved by the Director for a period of 2 years and grant the permittee the exclusive right to prospect on and explore the described lands to determine the existence of, or workability of, the mineral deposits therein. Only such material may be removed from the land as is necessary to demonstrate the existence of commercial quantities thereof.

(b) A prospecting permit will require payment in advance by permittee of an annual rental of not less than 25 cents per acre or fraction of an acre, but no less than $20 per year. The permittee may also be required, as a condition precedent to the issuance of a permit, to furnish a permit bond.

(c) Prospecting may be carried on with the consent of the appropriate official of the Department, bureau or agency having jurisdiction over the land where no structures are to be erected, and no substantial excavations or disturbances of the surface will be made. Such prospecting shall not be deemed to vest in the prospector an exclusive right of ex-

ploration or a preference right to a lease under this part.

§ 3221.3 Extension of permit.

(a) A prospecting permit may be extended for one additional term of 2 years, in the discretion of the signing officer, upon written application made by the permittee and filed in triplicate in the proper land office within 90 days prior to the expiration date of the permit. Such application must be accompanied by a filing fee of $10, which is not returnable. In support of an application for extension of a prospecting permit, the permittee must show that he has diligently performed prospecting activities on the land during the period for which the permit was issued. This requirement may be dispensed with, in the discretion of the authorized officer, upon a satisfactory showing that the permittee's failure to perform diligent prospecting activities was due to conditions beyond permittee's control.

(b) Upon failure of the permittee to file an application for extension within the specified period, the permit will expire 30 days after the end of its primary term without notice to the permittee and the lands will thereupon become subject to new application for prospecting permits.

§ 3221.4 Reward for discovery; preference right lease; bond.

(a) Upon discovery of any valuable deposit of minerals the permittee shall be entitled to a preference right lease for the mineral in any or all of the lands in the permit except as provided for in § 3220.0–6(a).

(b) Should the issuance of the preference right lease, for the acreage applied for, increase the permittee's leased acreage beyond 10,240 acres, such preference right lease will not issue unless the permittee, within the time allowed by the signing officer, relinquishes sufficient of his leased lands to reduce the area of his leaseholds, including the area to be included in the preference right lease, to 10,240 acres except as provided for in § 3221.1(c).

(c) An application for a preference right lease must be filed in the proper land office not more than 30 days after the termination date of the primary or extended term of the permit, and must describe the lands for which the lease is desired; must contain a statement of permittee's interests, direct or indirect, in acquired lands mineral leases except leases covering the leasable minerals mentioned in § 3220.0–6(a); must disclose any change in the information contained in the application for the permit, specify fully the extent the mode of occurrence of the mineral deposit disclosed by the prospecting, and show that a valuable deposit of minerals was discovered before the expiration of the permit.

(d) The application must be accompanied by a payment of $1 for each acre or fraction thereof included in the application, but not less than $20. In no event shall the first year's rental on any lease be less than $20. The lease will be issued on a form approved by the Director and dated the first day of the month following the date of the decision notifying the applicant that he is entitled to a preference right lease, except that upon the applicant's request, the lease will be dated the first day of the month following the date the application is filed. If the permit expires and the application for lease is finally rejected, royalty for the deposits mined will be charged at the permit rate (12½ percent) and such mining will not constitute a trespass.

(e) The permittee shall be liable for and pay to the United States a royalty of 12½ percent of the gross value of the minerals mined at the point of shipment to market during the period prior to the effective date of the preference right lease, but no mining operations shall be carried on prior to the effective date of such lease except with the written consent of the agency having jurisdiction over the surface of the land and subject to such conditions as the authorized representatives of the agency shall prescribe.

(f) The terms and conditions of the lease, including the royalty rates, will be established on an individual case basis. If minerals other than that specified in the issued lease should be discovered and mined by the lessee, an applicable royalty rate will be established by the lessor for such mineral. The lessee will be required to post a lease bond on a form approved by the Director before the lease will be executed by the Government. The lease will be issued for a period not exceeding 20 years, the term to be determined upon the advice of the agency having jurisdiction over

the surface and the United States Geological Survey. The lessee will be granted a right of renewal for successive periods, not exceeding 10 years each, under such reasonable terms and conditions as the Secretary of the Interior may prescribe, including the revision of or imposition of stipulations for the protection of the surface of the land as may be required by the agency having jurisdiction thereover. An application for renewal of the lease must be filed in a manner similar to that prescribed for extension of a permit in § 3221.3(a) and the proviisons of § 3221.3(b) are applicable to leases.

Subpart 3222—Competitive Leasing

§ 3222.1 Mineral deposits subject to lease through competitive bidding; leasing units.

(a) Except for preference right leases, as set out in the preceding section, leases for lands containing valuable mineral deposits will be issued only to the qualified person who offers the highest bonus by competitive bidding, either by oral auction or sealed bids or both, as provided in the published notice inviting bids for the issuance of a lease covering such deposits.

(b) Any qualified person may file an application for the competitive offering of such deposits. Leasing units may not exceed, in reasonably compact form, 2,560 acres of land described in the manner required by this section. The authorized officer may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for a logical mining unit.

§ 3222.2 Application for lease by competitive bidding.

(a) An application for a mineral lease through competitive bidding must be filed in triplicate in the appropriate land office. A form approved by the Director should be used for such an application, though its use is not mandatory. If this form is not used, the application should contain the information specified in § 3221.1 and should be accompanied by evidence that the land applied for is valuable for the mineral deposits named therein, together with a statement as to the character, extent and mode of occurrence thereof.

§ 3222.3 Notice of lease offer.

Notice of the offer of the mineral deposits for lease will be published once a week for 4 consecutive weeks, or for such other periods as the Bureau of Land Management may deem appropriate, in a newspaper of general circulation in the county in which the mineral deposits are situated. A copy of the notice will be posted in the proper Land Office during the period of publication. The notice will set the day and hour of sale, state whether the lease will be offered by oral auction bidding or by sealed bids, or both, and state that the successful bidder will be required to pay the cost of publishing the notice if only one parcel of land is involved. Where more than one parcel is offered, the successful bidder will be required to pay his proportionate share of such cost, which will be that proportion of the cost that the number of parcels awarded to the successful bidder bears to the number of parcels for which high bidders are declared. The notice will specify the place where the oral auction sale is to be held and where sealed bids are to be submitted, and other information pertinent to the offering. The notice will contain a warning to all bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders. The notice shall also state that the Government reserves the right to reject any and all bids.

§ 3222.4 Bidding requirements; deposits.

(a) At a sale by oral auction the high bidder must deposit with the officer conducting the sale, on the day of the sale, one-fifth of the amount of his bid and at a sale by sealed bids each bidder must include with his bid one-fifth of the amount of the bid.

(b) If the sale is by oral auction and sealed bids, the oral auction sale will proceed first at the time and place specified therefor in the notice of offering, and the officer conducting the sale will, upon the termination of such oral auction bids, declare the high bidder. Thereupon, the officer conducting the sale will publicly, open and audibly, read all of the sealed bids which were received timely, and the lease will be awarded to the highest bidder, whether an oral auction bidder or a sealed bidder. The lease will be awarded to the high

bidder, subject to the submission of proof of his qualifications.

(c) All deposits with bids including rental payments must be made by certified check, cashier's check, bank draft, money order, or cash. Deposits made on rejected or unsuccessful bids will be returned to the bidders.

§ 3222.5 Action by successful bidder.

Three copies of the lease to be awarded will be sent to the successful bidder who will be allowed 30 days from receipt in which to execute such lease, pay the balance of the bonus bid and the first year's rental in full, and file a surety bond in such amount as may be required, but not less than $500 on either of the bond forms specified in § 3222.7 and furnish proof of citizenship and holdings as set forth in § 3221.1(a)(3). If the successful bidder, after being awarded the lease, fails or refuses to execute the same or to otherwise comply with the applicable regulations, his deposit will be forfeited.

§ 3222.6 Rentals.

§ 3222.6–1 Payments and reports.

Rentals under all leases and permits shall be paid to the Manager of the proper land office, as set forth in § 3221.1 (b)(1), except that rentals and royalties on productive mining leases shall be paid to the Regional Mining Supervisor of the Geological Survey, with whom all reports concerning operations under the lease shall be filed. All remittances to the Bureau of Land Management shall be made payable to the Bureau of Land Management, those to the Geological Survey shall be made payable to the United States Geological Survey.

§ 3222.6–2 Suspension of operations and production.

(a) Upon a showing of the need and upon application therefor, filed in triplicate in the office of the Regional Mining Supervisor and a copy filed in the proper land office, the lessee may be granted a suspension of the operating and/or producing requirements of the lease. A rental in lieu of royalty of not less than $1 per acre shall be paid annually during the period of suspension. The period of suspension shall be specified in an appropriate order of the Secretary or his authorized representative.

(b) Notwithstanding the provisions of the preceding paragraph, the Secretary, in the interest of conservation of natural resources, may suspend all operating and producing requirements and waive, suspend, or reduce the rental or minimum royalty.

§ 3222.7 Bonds.

Corporate surety prospecting permit or lease bonds may be furnished on a form approved by the Director. In lieu of a corporate surety bond, a personal prospecting permit or lease bond secured by negotiable United States bonds of a par value equal to the amount of the required surety bond, together with a power of attorney may be executed on a form approved by the Director.

Subpart 3223—Contracts

§ 3223.1 Approval of operating or development contracts without regard to acreage limitations.

(a) The Secretary of the Interior or his authorized representative may, by and with the concurrence of the Geological Survey, and on such conditions as may be prescribed, approve operating or development contracts, or processing or milling arrangements, made by one or more lessees with one or more persons, associations, or corporations, to justify operations on a large scale for the discovery, development, production or transportation of ores, whenever, in his discretion, and regardless of acreage limitations provided for in this part, the conservation of natural products or the public convenience or necessity may require it, or the interests of the United States may be best subserved thereby.

(b) Three executed copies of an operating or development contract submitted for approval under this provision must be filed in the proper land office, and a duplicate original with the Regional Mining Supervisor of the Geological Survey. The contract must be accompanied by a statement showing all of the interests held by the contractor designated in the contract in the area, and also the agreed or the proposed plan of operation or development of the leased lands. All of the contracts held by the same contractor, in the area, should be submitted at the same time and full disclosure of the project made.

Subpart 3224—Relinquishment of Prospecting Permit or Lease

§ 3224.1 Surrender.

The permittee or lessee may surrender the entire prospecting permit or lease or any legal subdivision thereof. If the lands are not described by legal subdivision, a partial relinquishment must describe definitely the lands surrendered and give the exact area thereof. A relinquishment must be filed in triplicate in the proper land office. Upon its acceptance, it will be effective as of the date it is filed, subject to the continued obligation of the permittee or lessee and his surety, to make payment of all accrued rentals and royalties, and to provide for the preservation of any mines or productive works or permanent improvements on the lands in accordance with the regulations and terms of the lease, and for the faithful compliance of all of the terms of the prospecting permit or lease.

§ 3224.2 Cancellation or termination of prospecting permit or lease.

(a) Except as provided for in paragraph (b) of this section, if a permittee or lessee fails to comply with the general regulations in force at the date of the prospecting permit or lease, or, as to a lease at the effective date of any readjustment of the terms and conditions thereof, or defaults with respect to any of the terms, covenants, or stipulations of the permit or lease, and such failure or default continues for 30 days after service of written notice thereof by the Government then the permit or lease may be cancelled. A waiver of any particular cause for cancellation shall not prevent the cancellation of the permit or lease for any other cause, or for the same cause occurring at any other time. Until such cancellation is noted on the appropriate records of the Land Office, the lands will not be open to further application for permit or lease.

(b) Any prospecting permit or lease shall terminate automatically if the permittee or lessee fails to pay the rental on or before the anniversary date of the permit or lease. However, if the time for payment falls upon any day in which the proper office to receive payment is not open, payment received on the next official working day shall be deemed to be timely.

(c) The termination of the permit or lease for failure to pay the rental must be noted on the official records of the proper land office. Until such notation is made, the lands included in such prospecting permit or lease are not subject to the issuance of any other prospecting permit or lease. Applications for such permits filed prior to such notation will be rejected.

Subpart 3225—Transfers

§ 3225.1 Transfers, including subleases.

Prospecting permits and leases may be transferred in whole or in part. The approval of a transfer of part of the lands in a prospecting permit or lease will create a new prospecting permit or lease for the transferred portion. A discovery either on the retained or the assigned portion of a prospecting permit will not inure to the benefit of the other. Approval of a transfer will not extend the life of the prospecting permit or the readjustment periods of the lease. Transfers, whether by direct assignments, operating agreements, subleases, working or royalty interests, or otherwise, must be filed in triplicate in the proper land office within 90 days after execution, and must be accompanied by a filing fee of $10, which is not returnable. Evidence of the qualifications of the assignee or transferee to hold the permit or lease, as required by § 3221.1 (a)(3) and (b) must be submitted together with an application for approval of the transfer. Before a transfer of a prospecting permit or lease will be approved, the transferee must submit a surety bond if the original permit or lease required the maintenance of a bond. A transfer will take effect the first day of the month following its approval, or if the transferee requests, the first day of the month of the approval.

Subpart 3226—Royalties

§ 3226.1 Overriding royalties.

(a) An overriding royalty interest may be created by assignment or otherwise: *Provided, however,* That if the total of the overriding royalty interest at any time exceeds one percent of the gross value of the output at the point of shipment to market, it shall be subject to reduction or suspension by the Secretary of the Interior to a total of not less than one percent of such gross value, whenever, in the interest of conservation, it appears necessary to do so in order (1) to prevent premature abandonment, or (2) to make possible the economic mining of marginal or low-grade deposits.

Where there is more than one overriding royalty interest, any such suspension or reduction shall be applied to the respective interests in the manner agreed upon by the holders thereof, or in the absence of such agreement, in the inverse order of the dates of creation of such interests.

(b) Any assignment, sublease, or other transfer or agreement which creates an overriding royalty interest, will not be approved unless the owner of that interest files his agreement in writing that such interest is subject to suspension or reduction as provided in paragraph (a) of this section. No overriding royalties shall be paid at a rate in excess of the rate to which they have been so reduced until otherwise authorized by the Secretary of the Interior.

Subpart 3227—Fractional or Future Interest Leases and Permits

§ 3227.1 Terms and conditions.

A prospecting permit for a fractional interest in mineral deposits or a lease for a fractional or future interest in mineral deposits acquired by the Government may be issued in the discretion of the authorized officer, by and with the consent of the appropriate Government bureau or agency having jurisdiction over the land in which such deposits are located. The terms and conditions of such permits and leases will be established on an individual case basis. No specific form of application for such permits or leases is required, but the application should contain the information required by § 3221.1, as well as the information required by this section where applicable. The application must be filed in triplicate in the proper land office accompanied by a filing fee of $10 which is not returnable.

§ 3227.2 Present fractional interest leases or permits.

An application for a present fractional interest prospecting permit or lease must show whether the applicant owns all of the fractional mineral interest not owned by the United States or all of operating rights thereto. An applicant for such a permit or lease must have a present interest in the minerals. If applicant does not own all of such mineral interests or all of the operating rights thereto, the extent of the applicant's rights thereto must be shown as well as the names of the other owners of such rights. Since the issuance of a permit or lease to one who, upon such issuance, would have less than a majority interest in the minerals or the operating rights thereto is not regarded as being in the Government's interest, an application for a permit or lease, the granting of which would lead to such result, may be rejected.

§ 3227.3 Future or fractional future interest leases.

An applicant for a prospecting permit for a fractional mineral interest or for a future or fractional interest lease must submit, with his application, title evidence of his present interest in the mineral deposits. This may be accomplished by a certified abstract of title or a certificate of title. If applicant is the owner of the operating rights to the minerals and acquired such rights under a lease from or contract with the owner of such minerals, the application should also be accompained by three copies of such lease or contract. A whole or fractional future interest lease or a prospecting permit for a fractional interest will be issued only to an applicant who owns all or substantially all of the present operating rights to the minerals as fee owner, lessee, or operator holding such rights. Future interest leases will become effective on the date of vesting of title to the minerals in the United States as stated in the lease.

§ 3227.4 Rejection and termination of applications.

An application for a future interest lease filed less than one year prior to the date of the vesting in the United States of the present interest in the minerals will be rejected. Upon the vesting in the United States of the present possessory interest in the minerals, all applications for future interest leases outstanding at the time will automatically lapse and thereafter only offers for a present interest lease will be considered.

This circular supersedes Circular 2166 and that portion of 2178 relating to Part 3220.

GPO 856-314

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular 2206]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

OFFICE HOURS; TIME AND PLACE FOR FILING

Paragraph (a) of § 1821.2–1 is amended to read as follows:

§ 1821.2–1 Office hours of land offices.

(a) Land offices and the Washington office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the land offices and the Washington office are open to the public for the filing of documents and inspection of records are from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

APRIL 20, 1966.

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Circular Distribution List

This circular supersedes Circular 2179.

GPO 857-675

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2207]

PART 3120—OIL AND GAS

Subpart 3127—Continuation or Extension of Lease

CONTINUATION OF LEASE AS A RESULT OF ACTUAL DRILLING OPERATIONS

Section 3127.2 is amended to read as follows:

§ 3127.2 Continuation of lease as a result of actual drilling operations.

(a) Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

(b) Actual drilling operations must be conducted in such a way as to be an effort which one seriously looking for oil or gas could be expected to make in that particular area, given existing knowledge of geologic and other pertinent facts.

(c) As used in this section (1) "actual drilling operations" shall include not only the physical drilling of a well but the testing, completing or equipping of such well for the production of oil or gas; (2) "primary term" means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities.

STEWART L. UDALL,
Secretary of the Interior.

MAY 26, 1966.

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Circular Distribution List

GPO 858-418

Repl. by C-2223

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

GROUP 3100—PUBLIC DOMAIN LEASING

[Circular 2208]

PART 3140—POTASSIUM PERMITS AND LEASES

PART 3150—SODIUM PERMITS AND LEASES: USE PERMITS

PART 3160—PHOSPHATE LEASES: PROSPECTING PERMITS AND USE PERMITS

Lease Bond

1. The heading to Part 3150 is amended to read as set forth above.

2. Sections 3143.2–2, 3153.2–2, and 3162.2 are amended to read:

§ 3143.2–2 Lease bond.

A compliance bond of not less than $5,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, or (b) a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part. The right is reserved to require an increase in the amount of any bond furnished in any case where the Bureau of Land Management deems it proper to do so.

§ 3153.2–2 Lease bond.

A compliance bond of not less than $5,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, or (b) a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part. The right is reserved to require an increase in the amount of any bond furnished in any case where the Bureau of Land Management deems it proper to do so.

§ 3162.2 Lease bond.

A compliance bond of not less than $5,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, or (b) a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part. The right is reserved to require an increase in the amount of any bond furnished in any case where the Bureau of Land Management deems it proper to do so.

STEWART L. UDALL,
Secretary of the Interior.

JUNE 20, 1966.

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Circular Distribution List

GPO 858-737

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular 2209]

PART 5400—FOREST PRODUCTS DISPOSALS; GENERAL

PART 5430—PRESALE PREPARATION, ADVERTISEMENT AND CONTRACT PREPARATION

PART 5440—SALES ADMINISTRATION

Miscellaneous Amendments

Subpart 5400—Forest Product Disposals; General

1. Section 5400.0–5 is amended by clarifying the wording of paragraphs (a) and (f) and the deletion of the paragraph defining "Logging unit" to read as follows:

§ 5400.0–5 Definitions.

Except as the context may otherwise indicate, as the terms are used in Parts 5410–5450 of this chapter and in contracts issued thereunder:

(a) "Bureau" means the Bureau of Land Management, Department of the Interior.

(b) "Director" means the Director of the Bureau of Land Management.

(c) "Authorized Officer" means an employee of the Bureau of Land Management, to whom has been delegated the authority to take action.

(d) "O. and C. Lands" means the Revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road Grant Lands and other lands administered by the Bureau of Land Management under the provisions of the Act of August 28, 1937 (50 Stat. 874).

(e) "Public Lands" means the public domain and its surface resources under the jurisdiction of the Bureau of Land Management and lands from which the vegetative resources may be sold in accordance with the provisions of § 5400.0–3(a)(2)(ii).

(f) "Timber" means standing trees, downed trees or logs which are capable of being measured in board feet.

(g) "Other vegetative resources" means all vegetative material which cannot be measured in units of board feet of timber.

(h) "Set-aside" means a designation of timber for sale which is limited to bidding by small business concerns as defined by the Small Business Administration in its regulations (13 CFR Part 121) under the authority of section 15 of the Small Business Act of July 18, 1958 (72 Stat. 384).

(i) "Third party scaling" means the measurement of logs by a scaling organization, other than a Government agency, approved by the Bureau.

(j) "Sale value" means the contract value of the stumpage sold under the contract.

Subpart 5433—Bids and Awards of Contract

2. Section 5433.1 is amended by deleting paragraph (b) from § 5433.1 and incorporating it in § 5436.1; § 5433.1 will then read as follows:

§ 5433.1 Qualification of bidders and purchasers.

A bidder or purchaser for the sale of timber must be (a) an individual who is a citizen of the United States, (b) a partnership composed wholly of such citizens, or (c) an unincorporated association composed wholly of such citizens, or (d) a corporation authorized to transact business in the states in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 5433.2. To qualify for bidding to purchase set-aside timber, the bidder must accompany his deposit with a self-certification statement that he is qualified as a small business concern as defined by the Small Business Administration (13 CFR Part 121).

Subpart 5436—Contract Forms

3. Section 5436.1 is amended by the addition of paragraph (b) requiring a bidder to notify the authorized officer of his intent to apply for an SBA road construction loan, and is intended to facilitate action on the loan application rather than being a bid qualification. As so amended § 5436.1 reads as follows:

§ 5436.1 Provisions.

(a) All sales shall be made on contract forms approved by the Director. The authorized officer may include additional

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Circular Distribution List

provisions in the contract to cover conditions peculiar to the sale area, such as road construction, logging methods, silvicultural practices, reforestation, snag felling, slash disposal, fire prevention, fire control, and protection of improvements, watersheds, and recreational values. Such additional provisions shall be made available for inspection by prospective bidders during the advertising period.

(b) Where a timber sale notice provides that the successful bidder may use a Small Business Administration road construction loan, and the bidder has reason to believe that he qualifies for such road construction loan under SBA regulations (13 CFR PART 121), the bidder shall submit to the authorized officer a statement of his intention to file with SBA for such SBA road construction loan. The purpose of the filing is to facilitate action by the Authorized officer and the Small Business Administration on the loan application.

Subpart 5437—Performance Bonds

4. Section 5437.1 is amended by rewording paragraph (b) to delete reference to a logging unit and permit cutting of timber against the increase in value of the minimum performance bond. It will also permit payment for timber so cut in the regular installment manner. As amended § 5437.1(b) reads as follows:

§ 5437.1 Requirements.

* * * * *

(b) The authorized officer may permit the cutting of timber before payment of the second or subsequent installments as provided in this paragraph. The purchaser must increase the minimum performance bond required by paragraph (a) of this section by an amount equal to one or more installment payments. The adjusted bond must be approved by the authorized officer in writing prior to cutting any timber under the adjusted bond. The unenhanced value of timber allowed to be cut in advance of payment is limited to the amount of the increase over and above the minimum performance bond required by paragraph (a) of this section and in no event shall the unenhanced value of the timber cut exceed 50 percent of the total contract purchase price. The increased amount of the bond shall be used to assure payment for such timber. Timber cut pursuant to this paragraph may be paid by installments. Upon payment, the increased amount of the bond may be applied to other timber sold under the contract to permit its cutting in advance of payment.

Subpart 5441—Contract Performance

5. Section 5441.2 is amended to conform to the provisions of 5437.1 by rewording paragraph (c)(2) to require installment payment prior to removal of timber cut against the bond. Paragraph (d) is reworded to require payment in full prior to expiration of the time for cutting and removal. As so amended, § 5441.2 (c)(2) and (d) read as follows:

§ 5441.2 Payment.

* * * * *

(c) * * *

(2) Payment in advance of skidding, yarding or removal. The first installment shall be paid in the same manner as provided in subparagraph (1) of this paragraph. If cutting is permitted before payment, as provided by § 5437.1(b) of this chapter, payment by installment shall be made prior to the skidding, yarding, or removal of the timber sold. Each subsequent installment shall be due and payable without notice when the sale value of the timber skidded, yarded or removed equals the sum of all the payments minus the first installment.

(d) The total amount of the contract purchase price must be paid prior to expiration of the time for cutting and removal under the contract. For a cruise sale the purchaser shall not be entitled to a refund even though the amount of timber cut, removed, or designated for cutting may be less than the estimated total volume shown in the contract. For a scale sale, if it is determined after all designated timber has been cut and measured that the total payments made under the contract exceed the total sale value of the timber measured, such excess shall be refunded to the purchaser within 60 days after such determination is made.

Subpart 5443—Extension of Contracts

6. Section 5443.1 is amended to permit receipt of application for contract extension prior to the expiration of the time for cutting and removal. As amended § 5443.1 reads as follows:

§ 5443.1 Time.

If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the authorized officer may grant an extension of time, not to exceed one year, upon written request of the

purchaser. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request of the purchaser. Written requests for extension must be received prior to the expiration of the time for cutting and removal. No extension may be granted without reappraisal as provided in § 5443.2.

7. Section 5443.2(b) is amended to permit the authorized officer to waive the payment in full requirement as a condition of granting a contract extension. As so amended § 5443.2(b) reads as follows:

§ 5443.2 Reappraisal.

* * * * *

(b) For a cruise sale the timber sold remaining on the contract area shall be reappraised for the purpose of computing the reappraised total purchase price. The reappraised total purchase price shall not be less than the total purchase price established by the contract or last extension. The authorized officer may require that the reappraised total purchase price shall be paid in advance as a condition of granting an extension.

Effective date. The effect of these amendments will be to relax existing regulations and provide for a clearer interpretation of them. Accordingly, as it is in the best public interest to make these amendments effective with the contracting period beginning with the fiscal year, these amendments will become effective July 1, 1966, except as to sales of timber advertised prior thereto.

JOHN A. CARVER, Jr.,
Under Secretary of the Interior.

JUNE 23, 1966.

[F.R. Doc. 66-7077; Filed, June 27, 1966; 8:48 a.m.]

GPO 858-870

Repl. by C-2286

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT
(2000)

[Circular 2210]

PART 2220—GRANTS

Subpart 2221—Scrip

SATISFACTION OF SCRIP

1. Sections 2221.01, 2221.02, 2221.05, 2221.06, and 2221.07 are added to the regulations to read as follows:

§ 2221.01 Purpose.

The purpose of the regulations in this subpart is to provide procedures for the orderly satisfaction and retirement of outstanding valid scrip, lieu selection, and similar rights, consistent with the public land laws governing such rights, including the Act of August 31, 1964 (78 Stat. 751). This Act provides that all claims and holdings recorded under the Act of August 5, 1955 (69 Stat. 534, 535) which are not satisfied by methods provided by the Act shall become null and void January 1, 1970, except for soldiers' additional homestead claims which shall become null and void on January 1, 1975.

§ 2221.02 Objectives.

The program of the Secretary of the Interior is to encourage the early satisfaction of all outstanding valid scrip consistent with the Act of August 31, 1964.

§ 2221.05 Definitions.

For the purposes of this subpart:

(a) "Claim" means all valid and unsatisfied claims and holdings recorded under the Act of August 5, 1955 (69 Stat. 534, 535)

(b) "Value" means fair market value, as determined by the Secretary or his delegate.

§ 2221.06 Validity.

No transaction for the satisfaction of a claim, whether by cash or conveyance of land, shall be consummated unless and until the authorized officer determines that the scrip is valid.

§ 2221.07 Classification.

(a) When lands are classified pursuant to section 3 of the Act of August 31, 1964, for satisfaction of scrip, the classification order will specify the type or types of claims which may be exchanged for the classified lands.

(b) Unless sooner terminated by the authorized officer, any classification, pursuant to section 3 of the Act of August 31, 1964, will terminate on December 31, 1969, except that classification of land for soldiers' additional homestead claims will terminate December 31, 1974.

(c) Land and interests in land may be classified for satisfaction of claims only if they are suitable for claim satisfaction under the terms of the authority establishing the claim and under the provisions of other applicable laws.

(d) Lands classified for the satisfaction of claims will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

(e) In satisfaction of applications filed on and after July 1, 1966, each claimant is entitled to receive land in tracts having a value per acre no less than the following:

(1) For soldiers' additional homestead, Isaac Crow and Merritt W. Blair claims, $250;

(2) For Valentine, Sioux Half Breed, Wyandotte, Porterfield, Gerard, McKee, and railroad lieu selection claims, $1,270;

(3) For forest lieu selection claims, $275.

(f) Hereafter, no tract of land will be classified as suitable for disposition in satisfaction for claims if the value per acre of the tract exceeds the following:

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Circular Distribution List

(1) For soldiers' additional homestead, Isaac Crow and Merritt W. Blair claims, $275;

(2) For Valentine, Sioux Half Breed, Wyandotte, Porterfield, Gerard, McKee, and railroad lieu selection claims, $1,400;

(3) For forest lieu selection claims, $300.

(g) Claimants may submit recommendations of areas to be classified for satisfaction of claims, specifying the type of claim for which the land should be classified. Recommendations should be sent to the State Director, Bureau of Land Management, of the State in which the recommended lands are located (see § 1821.2 1 of this chapter).

2. Section 2221.2 is revised in its entirety to read as follows:

§ 2221.2 Procedures to satisfy scrip.

§ 2221.2-1 Application.

(a) Every application to satisfy a claim must be made on a form approved by the Director, properly executed.

(b) Applications to satisfy claims by the conveyance of public lands will not be accepted, will not be considered as filed, and will be returned to the applicant unless the lands sought have previously been classified as suitable for satisfaction of claims.

(c) If all else is regular the application first received for a tract of land will be entitled to priority, whether delivery was by mail or otherwise. Where applications are received simultaneously, a drawing will be held to determine priority, except that where applications are received simultaneously through the mails, the one bearing the earliest postmark is entitled to priority.

(d) All applications filed pursuant to this section must be accompanied by an application service fee of $10, which will not be returnable.

§ 2221.2–2 Offers of land by Bureau of Land Management.

(a) After classification of land pursuant to section 3 of the Act of August 31, 1964, the authorized officer will, by certified mail, offer each claimant sufficient land to satisfy his claim, from among the lands classified as suitable for satisfaction of the type of claim he holds.

(b) Notice of acceptance of an offer must be submitted to the State Director, Bureau of Land Management, of the State within which the offered land is located, within 60 days of the date the offer was mailed.

§ 2221.2–3 Election to receive cash.

(a) Any time up to and including December 31, 1969, or in the case of soldiers' additional homestead claims, December 31, 1974, a claimant may elect, by written notice to the Director, Bureau of Land Management, to receive cash instead of land in satisfaction of his claim.

(b) Payments will be made at a rate equal to the value per acre of the lands offered under section 4 of the Act of August 31, 1964, for claims of the type being satisfied.

§ 2221.2–4 Notice; publication; proof.

Applicants for land in satisfaction of scrip will be required upon demand to publish once a week for four consecutive weeks in accordance with § 1824.4 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice informing all interested persons of the opportunity to file in the appropriate office their objections to the use of such land in satisfaction of claims. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service. Proof of publication must be filed in accordance with § 1824.9–3 of this chapter.

AUGUST 18, 1966.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 66–9185; Filed, Aug. 23, 1966; 8:46 a.m.]

GPO 830-049

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2211]

PART 3320—ACTS CONCERNING LIMITED AREAS

Subpart 3328—Development of Minerals in Lands Within Whiskeytown-Shasta-Trinity National Recreation Area

Sec.

3328.0–3 Authority: description of area.
3328.1 Other regulations applicable.
3328.2 Leasing units.
3328.3 Royalties, rentals, and minimum royalties.
3328.4 Applications and qualifications.
3328.4–1 Qualifications of applicants.
3328.4–2 Applications.
3328.5 Leases.
3328.5–1 Term of lease.
3328.5–2 Lease term and conditions.
3328.5–3 Leases by competitive bidding.

§ 3328.0–3 Authority: description of area.

(a) Section 6 of the act of November 8, 1965 (P.L. 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

(b) The area subject to the regulations in this subpart is that shown in drawing numbered BOR–WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C.

(c) Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

§ 3328.1 Other regulations applicable.

(a) Except as otherwise specifically provided in this Subpart 3328, the regulations contained in Parts 3100 and 3150 of this subchapter and in 30 CFR Part 231 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws.

(b) Mineral deposits of coal, oil, gas, phosphate, potassium, and sodium shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181–263), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281–287), as amended, in which group 3100 is specifically applicable.

(c) Materials within the public lands covered by the regulations in this part which are not subject to the provisions of paragraphs (a) and (b) of this section, shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

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Circular Distribution List

§ 3328.2 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions described by metes and bounds connected to a corner of the public survey by courses and distances. The authorized officer of the Bureau of Land Management may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3328.3 Royalties, rentals, and minimum royalties.

Rentals and royalties will be determined on the basis of the fair market value. In no event shall the rentals or royalties be less than:

(a) Fifty cents per acre payable annually in advance until production is obtained.

(b) One dollar per acre after production is obtained as a minimum royalty payable annually in advance.

(c) Two percent of the amount or value of the minerals mined, the exact amount of royalty to be fixed prior to the issuance of the lease.

§ 3328.4 Applications and qualifications.

§ 3328.4–1 Qualifications of applicants.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens, and (c) corporations organized under the laws of the United States or of any State thereof.

§ 3328.4–2 Applications.

An applicant must give his address and citizenship qualifications in the manner prescribed in § 3132.2 of this subchapter describe the land in terms of legal subdivisions if surveyed, otherwise by metes and bounds, and disclose the mineral for which the lease is desired. The applicant must state whether the mineral applied for can be developed in paying quantities stating the reasons therefor and must furnish such facts as are available to him respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3328.5 Leases.

§ 3328.5–1 Term of lease.

Leases will be issued for a period of 5 years. Any lease in good standing upon which production in paying quantities has been obtained will be subject to renewal for successive 5 year terms on such reasonable terms as may be prescribed by the Secretary of the Interior. Application for renewal must be filed within 90 days prior to the termination of the lease term for which renewal is sought unless land has been withdrawn from the recreation area at the expiration of such term.

§ 3328.5–2 Lease term and conditions.

Each lease will contain provisions for the following:

(a) Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions;

(b) Occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals and subject to any special rules to protect the values of the recreation area;

(c) No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals;

(d) Lessee shall not conduct operations in such a manner as to adversely affect the purpose of the Central Valley project through dumping, drainage, or otherwise;

(e) Lessee shall not erect any structure or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor;

(f) The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3328.5–3 Leases by competitive bidding.

Leases may be offered competitively for any land applied for under this part without regard to the quantity or quality of the mineral deposit that may be present therein.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 25, 1966.

[F.R. Doc. 66–9529; Filed, Aug. 31, 1966; 8:46 a.m.]

GPO 830-294

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2211]

PART 3320—ACTS CONCERNING LIMITED AREAS

Subpart 3328—Development of Minerals in Lands Within Whiskeytown-Shasta-Trinity National Recreation Area

Sec.

3328.0–3 Authority: description of area.
3328.1 Other regulations applicable.
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3328.4–1 Qualifications of applicants.
3328.4–2 Applications.
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3328.5–1 Term of lease.
3328.5–2 Lease term and conditions.
3328.5–3 Leases by competitive bidding.

§ 3328.0–3 Authority: description of area.

(a) Section 6 of the act of November 8, 1965 (P.L. 89–336; 79 Stat. 1295), authorizes the Secretary of the Interior to permit the removal of the nonleasable minerals from lands (or interest in lands) under his jurisdiction within the Whiskeytown-Shasta-Trinity National Recreation Area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and from those under the jurisdiction of the Secretary of Agriculture within the recreation area in accordance with the provisions of section 3 of the Act of September 1, 1949 (63 Stat. 683; 30 U.S.C. 192c); and he may permit the removal of leasable minerals from lands (or interest in lands) within the recreation area in accordance with the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351–359), if he finds that such disposition would not have significant adverse effects on the purpose of the Central Valley project or the administration of the recreation area.

(b) The area subject to the regulations in this subpart is that shown in drawing numbered BOR–WEST 1004, dated July 1963, entitled "Proposed Whiskeytown-Shasta-Trinity National Recreation Area," which is on file and available for public inspection in the office of the Director of the Bureau of Outdoor Recreation, Department of the Interior, Washington, D.C.

(c) Any lease or permit respecting minerals in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe.

§ 3328.1 Other regulations applicable.

(a) Except as otherwise specifically provided in this Subpart 3328, the regulations contained in Parts 3100 and 3150 of this subchapter and in 30 CFR Part 231 shall govern the leasing of mineral deposits which are presently subject to location under the general mining laws.

(b) Mineral deposits of coal, oil, gas, phosphate, potassium, and sodium shall be governed by regulations issued under the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181–263), as amended, and February 27, 1927 (44 Stat. 1057; 30 U.S.C. 281–287), as amended, in which group 3100 is specifically applicable.

(c) Materials within the public lands covered by the regulations in this part which are not subject to the provisions of paragraphs (a) and (b) of this section, shall be subject to disposal under the Materials Act of July 31, 1947 (61 Stat. 681; 43 U.S.C. 1185), as amended, subject to the conditions and limitations on occupancy and operations prescribed for leases in this part.

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Circular Distribution List

§ 3328.2 Leasing units.

Leasing units may not exceed 640 acres consisting, if the lands are surveyed, of legal subdivisions in reasonably compact form or, if the lands are not surveyed, of a square or rectangular area with north and south and east and west boundaries so as to approximate legal subdivisions described by metes and bounds connected to a corner of the public survey by courses and distances. The authorized officer of the Bureau of Land Management may prescribe a lesser area for any mineral deposit if the Geological Survey reports that such lesser area is adequate for an economic mining operation.

§ 3328.3 Royalties, rentals, and minimum royalties.

Rentals and royalties will be determined on the basis of the fair market value. In no event shall the rentals or royalties be less than:

(a) Fifty cents per acre payable annually in advance until production is obtained.

(b) One dollar per acre after production is obtained as a minimum royalty payable annually in advance.

(c) Two percent of the amount or value of the minerals mined, the exact amount of royalty to be fixed prior to the issuance of the lease.

§ 3328.4 Applications and qualifications.

§ 3328.4–1 Qualifications of applicants.

Leases may issue to (a) citizens of the United States, (b) associations of such citizens, and (c) corporations organized under the laws of the United States or of any State thereof.

§ 3328.4–2 Applications.

An applicant must give his address and citizenship qualifications in the manner prescribed in § 3132.2 of this subchapter describe the land in terms of legal subdivisions if surveyed, otherwise by metes and bounds, and disclose the mineral for which the lease is desired. The applicant must state whether the mineral applied for can be developed in paying quantities stating the reasons therefor and must furnish such facts as are available to him respecting the known occurrence of the mineral, the character of such occurrence and its probable value as evidencing the existence of a workable deposit of such mineral. Each application must be accompanied by a filing fee of $10 which will not be returnable.

§ 3328.5 Leases.

§ 3328.5–1 Term of lease.

Leases will be issued for a period of 5 years. Any lease in good standing upon which production in paying quantities has been obtained will be subject to renewal for successive 5 year terms on such reasonable terms as may be prescribed by the Secretary of the Interior. Application for renewal must be filed within 90 days prior to the termination of the lease term for which renewal is sought unless land has been withdrawn from the recreation area at the expiration of such term.

§ 3328.5–2 Lease term and conditions.

Each lease will contain provisions for the following:

(a) Diligent development of the leased property except when operations are interrupted by strikes, the elements, or casualties not attributable to the lessee unless operations are suspended upon a showing that the lease cannot be operated except at a loss because of unfavorable market conditions;

(b) Occupation and use of the surface of the claim shall be restricted to such as is reasonably necessary to the exploration, development and extraction of the leased minerals and subject to any special rules to protect the values of the recreation area;

(c) No vegetation will be destroyed or disturbed except where necessary to mine and remove the minerals;

(d) Lessee shall not conduct operations in such a manner as to adversely affect the purpose of the Central Valley project through dumping, drainage, or otherwise;

(e) Lessee shall not erect any structure or open or construct roads or vehicle trails without first obtaining written permission from an authorized officer or employee of the National Park Service. The permit for a road or trail may be conditioned upon the permittee's maintaining the road or trail in passable condition, satisfactory to the officer in charge of the area so long as it is used by the permittee or his successor;

(f) The right is reserved to insert other terms in the lease when deemed necessary for the protection of the surface, its resources and use for recreation.

§ 3328.5–3 Leases by competitive bidding.

Leases may be offered competitively for any land applied for under this part without regard to the quantity or quality of the mineral deposit that may be present therein.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 25, 1966.

[F.R. Doc. 66–9529; Filed, Aug. 31, 1966; 8:46 a.m.]

GPO 830-294

Replaced by 2221

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2212]

PART 2230—SPECIAL USES

Subpart 2232—Recreation and Public Purposes Act

TERM OF LEASES

1. Section 2232.0–3 is amended to read as follows:

§ 2232.0–3 Authority.

The act of June 14, 1926, as amended (43 U.S.C. 869; 869–4), authorizes the Secretary of the Interior, under specified conditions, to lease or sell lands for recreational and public purposes. This legislation is referred to as "the act" in the regulations of this part.

2. In § 2232.1–2, the heading and paragraph (a)(1) are amended, existing paragraphs (a) (5) and (6) are renumbered (a) (6) and (7) respectively, and a new paragraph (a)(5) is added, all to read as follows:

§ 2232.1–2 Applications for transfer, change of use, for renewal of leases, and for new leases under the Act of June 20, 1966.

(a)(1) Applications under the act for permission to add to, or to change the use specified in a lease or patent, applications to transfer title or lease to a third party, applications for a new lease under section 2 of the Act of June 20, 1966 (80 Stat. 210), and applications for renewal of a lease must be filed in triplicate with the appropriate office of the Bureau of Land Management. No form is specified but the matter should be fully explained by the applicant.

* * * * *

(5) Section 2 of the Act of June 20, 1966, authorizes the issuance of new leases in lieu of leases which were in force on June 20, 1966. Applications for new leases must be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (i) the need for a new lease and (ii) any changes in the terms and conditions of the lease which the applicant may desire.

* * * * *

3. In § 2232.2–2, paragraph (a) is amended to read as follows:

§ 2232.2–2 Lease provisions.

(a) The term of leases under the act will be fixed by the authorized official but will not exceed 25 years. Leases will be renewable at the discretion of such official.

STEWART L. UDALL,
Secretary of the Interior.

AUGUST 26, 1966.

[F.R. Doc. 66–9530; Filed, Aug. 31, 1966; 8:47 a.m.]

Published in 31 F.R. 11546, September 1, 1966 - Effective upon publication.

Circular Distribution List

Repl. by C-2217

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

[Circular No. 2213]

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4111—Awards of Grazing Privileges

Subpart 4115—Records and Administrative Procedures

GRAZING REGULATIONS FOR PUBLIC LANDS

1. Section 4111.1–1 is amended as indicated below:

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

2. In § 4115.2–1, paragraph (k)(4) is revised to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

* * * * *

(k) * * *

(4) *Payment of fees; modification in fees due.* No license or permit shall be issued or renewed until payment of all fees due the United States under these regulations has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in full in advance before grazing use is authorized. Grazing privileges may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make a change in authorized grazing use must file, in advance, a written request for such changes with the District Manager. If the District Manager approves the request he will issue an adjusted fee notice.

STEWART L. UDALL,
Secretary of the Interior.

SEPTEMBER 9, 1966.

[F.R. Doc. 66–10129; Filed, Sept. 15, 1966; 8:46 a.m.]

Published in 31 F.R. 12100, September 16, 1966 - Effective 30 days after publication.

Circular Distribution List

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular 2215]

PART 5430—PRESALE PREPARATION, ADVERTISEMENT AND CONTRACT PREPARATION

Subpart 5433—Bids and Award of Contract

QUALIFICATION OF BIDDERS AND PURCHASERS

Section 5433.1 is amended by additional wording relating to eligibility to qualify to purchase set-aside timber. As amended § 5433.1 will read as follows:

§ 5433.1 Qualification of bidders and purchasers.

A bidder or purchaser for the sale of timber must be (a) an individual who is a citizen of the United States, (b) a partnership composed wholly of such citizens, (c) an unincorporated association composed wholly of such citizens, or (d) a corporation authorized to transact business in the States in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 5433.2. To qualify for bidding to purchase set-aside timber, the bidder must not have been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales and must accompany his deposit with a self-certification statement that he is qualified as a small business concern as defined by the Small Business Administration (13 CFR Part 121).

CHARLES F. LUCE,
Under Secretary of the Interior.

OCTOBER 11, 1966.

[F.R. Doc. 66-11298; Filed, Oct. 17, 1966; 8:45 a.m.]

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Circular Distribution List

GPO 831-120

Repl. by C-2295

Circular No. 2214

Regulations pertaining to:

SPECIAL USES

Small Tract — Alaska

43 CFR 2233.9

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

September 21, 1966

§ 2233.9 Alaska.

§ 2233.9–1 Purchase of tracts not exceeding 5 acres, on showing as to employment or business (Act of March 3, 1927).

(a) *Authority.* The act of March 3, 1927 (44 Stat. 1364; 48 U.S.C. 461), as amended, authorizes the sale as a homestead or headquarters of not to exceed five acres of unreserved public lands in Alaska at the rate of $2.50 per acre, to any citizen of the United States 21 years of age employed by citizens of the United States, association of such citizens, or by corporations organized under the laws of the United States, or of any State or Territory, whose employer is engaged in trade, manufacture, or other productive industry in Alaska, and to any such person who is himself engaged in trade, manufacture or other productive industry in Alaska. The lands must be nonmineral in character except that lands that may be valuable for coal, oil, or gas deposits are subject to disposition under the provisions of the act of March 8, 1922 (42 Stat. 415; 48 U.S.C. 376–377), as amended.

(b) *Purpose of statute.* The purpose of this statute is to enable fishermen, trappers, traders, manufacturers, or others engaged in productive industry in Alaska to purchase small tracts of unreserved land in the State, not exceeding 5 acres, as homesteads or headquarters.

(c) *Notice of initiation of claim.* A notice of the initiation of a claim under the act of March 3, 1927, must designate the kind of trade, manufacture, or other productive industry in connection with which the claim is maintained or desired, and identify its ownership. The procedure as to notices will be governed in other respects by the provisions of § 2233.9–2(b) to (e).

(d) *Use of lands.* Care will be taken in all cases before patent issues to see that the lands applied for are used for the purposes contemplated by the said act of March 3, 1927, and that they are not used for any purpose inconsistent therewith.

(e) *Form and contents of applications.* Applications under the act of March 3, 1927, must be filed in duplicate in the land office for the district in which the land is situated, and the claim must be in reasonably compact form.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) The age and citizenship of applicant.

(2) The actual use and occupancy of the land for which application is made for a homestead or headquarters.

(3) The date when the land was first occupied as a homestead or headquarters.

(4) The nature of the trade, business, or productive industry in which applicant or his employer, whether a citizen, an association of citizens, or a corporation is engaged.

(5) The location of the tract applied for with respect to the place of business and other facts demonstrating its adaptability to the purpose of a homestead or headquarters.

(6) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any natives of Alaska, or occupied as a town site or missionary station or reserved from sale, and that the tract does not include improvements made by or in possession of another person, association, or corporation.

(7) That the land is not included within an area which is reserved because of springs thereon. All facts as to medicinal or other springs must be stated, in accordance with § 2321.1–2(c).

(8) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(9) If the land desired for purchase is surveyed, the application must include a description of the tract by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing and the application will be amended accordingly. Where a supplemental plat is required, to provide a proper description, it will be prepared at the time of approval of the application.

(10) If the land is unsurveyed, the application must be accompanied by a petition for survey, describing the tract applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(11) All applications must be accompanied by an application service fee of $10, which will not be returnable.

CROSS REFERENCES: See the following parts in this subchapter: For soldiers' additional rights, § 2221.9; for Indian and Eskimo allotments, Subpart 2212; for mining claims, Subpart 3636; for school indemnity selections, § 2222.9; for shore space, Subpart 2024; for trade and manufacturing sites, Subpart 2213.

(f) *Time for filing application.* Application to purchase a claim, along with the required proof or showing, must

be filed within 5 years after the filing of notice of the claim.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

§ 2233.9–2 Purchase of tracts not exceeding 5 acres, without showing as to employment or business (Act of May 26, 1934).

(a) *Authority.* The act of May 26, 1934 (48 Stat. 809; 48 U.S.C. 461) amended section 10 of the act of May 14, 1898 (30 Stat. 413), as amended by the act of March 3, 1927 (44 Stat. 1364), so as to provide that any citizen, after occupying land of the character described in said section of a homestead or headquarters, in a habitable house not less than 5 months each year for 3 years, may purchase such tract, not exceeding 5 acres, in a reasonably compact form, without a showing as to his employment or business, upon the payment of $2.50 per acre, the minimum payment for any one tract to be $10.

(b) *Notice of initiation of claim.* Any qualified person initiating a claim on or after April 29, 1950, under the act of May 26, 1934, must file notice of the claim for recordation in the land office for the district in which the land is situated, within 90 days after such initiation. Where on April 29, 1950, such a claim was held by a qualified person, such person must file notice of the claim in the proper land office within 90 days from that date.

(c) *Form of notice.* The notice must be filed on a form approved by the Director in triplicate if the land is unsurveyed, or in duplicate if surveyed, and shall contain: (1) The name and address of the claimant, (2) age and citizenship, (3) date of settlement and occupancy and (4) the description of the land by legal subdivisions, section, township and range, if surveyed, or, if unsurveyed, by metes and bounds with reference to some natural object or permanent monument, giving, if desired, the approximate latitude and longitude.

(d) *Failure to file notice.* Unless a notice of the claim is filed within the time prescribed in paragraph (b) of this section no credit shall be given for occupancy of the site prior to filing of notice in the proper land office, or application to purchase, whichever is earlier.

(e) *Recording fee.* The notice of the claim must be accompanied by a remittance of $10.00, which will be applied as a service charge for recording the notice, and will not be returnable, except in cases where the notice is not acceptable to the land office for recording because the land is not subject to the form of disposition specified in the notice.

(f) *Form and contents of application.* Applications under the act of May 26, 1934, must be filed in duplicate, if for surveyed land, and in triplicate, if for unsurveyed land, in the land office for the district within which the land is situated.

An application need not be under oath but must be signed by the applicant and corroborated by the statements of two persons and must show the following facts:

(1) Full name, post office address and age of applicant.

(2) Whether the applicant is a native-born or naturalized citizen of the United States, and if naturalized, evidence of such naturalization must be furnished.

(3) A description of the habitable house on the land, the date when it was placed on the land, and the dates each year from which and to which the applicant has resided in such house.

(4) That no portion of the tract applied for is occupied or reserved for any purpose by the United States, or occupied or claimed by any native of Alaska, or occupied as a townsite, or missionary station, or reserved from sale, and that the tract does not include improvements made by or in the possession of any other person, association, or corporation.

(5) That the land is not included within an area which is reserved because of hot, medicinal or other springs, as explained in § 2321.1–2(c). If there be any such springs upon or adjacent to the land, on account of which the land is reserved, the facts relative thereto must be set forth in full.

(6) That no part of the land is valuable for mineral deposits other than coal, oil or gas, and that at the date of location no part of the land was claimed under the mining laws.

(7) That the applicant has not theretofore applied for land under said act, or if he has previously purchased a tract he should make a full showing as to the former purchase and the necessity for the second application.

(8) An application for surveyed land must describe the land by aliquot parts of legal subdivisions, not exceeding 5 acres. If the tract is situated in the fractional portion of a sectional lotting, the lot may be subdivided; where such

subdivision, however, would result in narrow strips or other areas containing less than 2½ acres, not suitable for disposal as separate units, such adjoining excess areas, in the discretion of the authorized officer and with the consent of the applicant, may be included with the tract applied for, without subdividing, and the application will be amended accordingly. Where a supplemental plat is required to provide a proper description, it will be prepared at the time of approval of the application.

(9) All applications for unsurveyed land must be accompanied by a petition for survey, describing the land applied for with as much certainty as possible, without actual survey, not exceeding 5 acres, and giving the approximate latitude and longitude of one corner of the claim.

(10) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

§ 2233.9–3 Veterans preference.

(a) *Applications by veterans of World War II or of the Korean conflict.* (1) Upon the restoration or opening of surveyed public lands in Alaska with a preference right of application to veterans of World War II or of the Korean conflict, pursuant to section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U.S.C. 282), as amended, such veterans may file applications for home or headquarter sites on such lands under the act of May 26, 1934 (48 Stat. 809; 48 U.S.C. 461). Preference right applications filed by such veterans must describe the land desired in terms of the public land surveys and must give all of the information required by § 2233.9–2(f) except as to the erection of a habitable house on the land and compliance with the law in the matter of residence. No payment will be required until proof of compliance with the residence requirements has been made. Such an applicant will be required to establish residence upon the land in a habitable house within 6 months from the date of the notice of the allowance of his application. An extension of time to establish residence may be granted under the conditions under which it may be granted to a homestead entryman. During the first year after establishing residence the claimant will be required to reside upon the land for a period of at least 5 months. He may claim credit on the period of residence required by the act of May 26, 1934, for military or naval service in like manner as is provided in the case of homestead entries.

(2) The preference right of application granted by the Act of September 27, 1944 terminated September 27, 1959.

(b) *Time for filing application.* Except as provided in § 2233.9–3(a) application to purchase a claim, along with the required proof or showing, must be filed within 5 years after the filing of notice of the claim.

(c) *Publication and posting.* In the matter of publication and posting these applications will be governed by the instructions given in connection with applications for soldiers' additional homestead entries as set out in § 2221.9–4(e).

(Sec. 10, 30 Stat. 413, as amended; 48 U.S.C. 461)

GPO 830-577

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER E—FOREST MANAGEMENT (5000)

[Circular 2215]

PART 5430—PRESALE PREPARATION, ADVERTISEMENT AND CONTRACT PREPARATION

Subpart 5433—Bids and Award of Contract

QUALIFICATION OF BIDDERS AND PURCHASERS

Section 5433.1 is amended by additional wording relating to eligibility to qualify to purchase set-aside timber. As amended § 5433.1 will read as follows:

§ 5433.1 Qualification of bidders and purchasers.

A bidder or purchaser for the sale of timber must be (a) an individual who is a citizen of the United States, (b) a partnership composed wholly of such citizens, (c) an unincorporated association composed wholly of such citizens, or (d) a corporation authorized to transact business in the States in which the timber is located. A bidder must also have submitted a deposit in advance, as required by § 5433.2. To qualify for bidding to purchase set-aside timber, the bidder must not have been determined by the Small Business Administration to be ineligible for preferential award of set-aside sales and must accompany his deposit with a self-certification statement that he is qualified as a small business concern as defined by the Small Business Administration (13 CFR Part 121).

CHARLES F. LUCE,
Under Secretary of the Interior.

OCTOBER 11, 1966.

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GPO 831-120

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2216]

PART 1720—PROGRAMS AND OBJECTIVES

Subpart 1727—Designation of Areas and Sites

Part 1720 is amended to add a new Subpart 1727 to read as follows:

Subpart 1727—Designation of Areas and Sites

§ 1727.0–1 Purpose.

This subpart defines the circumstances and procedures under which specific areas of public and other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management may be designated and identified.

§ 1727.0–2 Objective.

The objective is to provide guidelines for the designation and identification of such areas, and to specify the nature and effect of such designations.

§ 1727.0–3 Authority.

(a) Section 1(b)(1) of the Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986, 43 U.S.C. 1411) provides that none of the public or other Federal lands exclusively administered by the Secretary of the Interior through the Bureau of Land Management shall be given a designation or classification unless such designation or classification is authorized by statute or defined in regulations promulgated by the Secretary of the Interior. Classifications are described in Part 2410 of this chapter.

(b) Section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), authorizes the Secretary of the Interior to enforce and carry into execution, by appropriate regulation, every part of the provisions of the public land laws not otherwise specially provided for.

§ 1727.0–5 Definitions.

(a) "Designation" refers to the official identification and naming of a general area or site on public land or other Federal land exclusively administered by the Secretary through the Bureau of Land Management.

§ 1727.1 Areas or sites that may be designated.

(a) No lands may be designated under the regulations in this subpart unless they are either (1) classified for retention for multiple use management under the regulations and criteria in Part 2410 of this chapter, or (2) withdrawn or reserved under the regulations in Subpart 2311 of this chapter or other appropriate authority, or (3) given special status by act of Congress such as the revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands or lands acquired under the Bankhead-Jones Act and transferred to the Bureau of Land Management for administration.

(b) The following types of areas and sites may be designated under the regulations in this subpart:

(1) *Recreation lands.* A tract of land usually several thousand acres in size where recreation is or is expected to be a major use, and designation will assist the public by making the areas known to them. Some examples of areas which may be designated as recreation lands follow: Scenic areas of natural beauty such as waterfalls; habitat of interesting, rare or unusual plants or animals; gorges; natural lakes; geological areas of outstanding structural or historical features of the earth's development such as caves, glaciers and other phenomena; roadless areas in which the primitive environment is preserved, sometimes referred to as wilderness, wild, primitive, roadless or virgin areas. Recreation lands will contain one or more of the six classes adopted by the Bureau of Outdoor Recreation. These classes will be identified and described at the time an area is designated. These lands may be defined briefly as follows:

(i) Class I—High-density recreation areas: Areas intensively developed and managed for mass use.

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Circular Distribution List

(ii) Class II—General outdoor recreation areas: Areas subject to substantial development for a wide variety of specific recreation uses.

(iii) Class III—Natural environment areas: Varied and interesting land forms, lakes, streams, flora, and fauna within attractive natural settings suitable for recreation in a natural environment and usually in combination with other uses.

(iv) Class IV—Outstanding natural areas: Areas of outstanding scenic splendor, natural wonder, or scientific importance that merit special attention and care in management to insure their preservation in their natural condition. These usually are relatively undisturbed, representative of rare botanical, geological, or zoological characteristics of principal interest for scientific and research purposes.

(v) Class V—Primitive areas: Extensive natural, wild, and undeveloped areas and settings essentially removed from the effects of civilization. Essential characteristics are that the natural environment has not been disturbed by commercial utilization and that the areas are without mechanized transportation.

(vi) Class VI—Historic and cultural sites: Sites of major historical or cultural significance, either national, regional, or local. These are usually small tracts of lands containing significant evidence of American history, such as battlegrounds, mining camps, cemeteries, pioneer trails, and trading posts; or lands which contain significant evidence of prehistoric life such as pictographs, petroglyphs, burial grounds, prehistoric structures, middens, fossils, paleontological remains, and any other evidences of prehistoric life forms.

(2) *Recreation sites.* These are relatively small tracts of land which have value for concentrated and intensive recreation use that usually requires construction and maintenance of public facilities. Recreation sites will contain Class I, II, III, or VI recreation lands under the Bureau of Outdoor Recreation classification system described in subparagraph (1) of this paragraph.

(3) *Resource conservation areas.* These are relatively small areas of land which include a variety of resource management activities demonstrating multiple use and sustained yield conservation in action.

§ 1727.2 Standards for names.

(a) To the fullest extent possible, standards established by the Board on Geographic Names will be followed in naming special management areas.

(b) First preference will generally be given to a geographic feature within the site or area if the feature significantly affects the utilization of the natural resources of the area.

(c) No site or area will be named after a living person. An area may be named after a deceased person if that person made a personal contribution to the utilization or management of the natural resources in the area.

(d) For public identification purposes, names of sites and areas designated in accordance with the regulations in this subpart shall be brief and descriptive.

§ 1727.3 Standards for identification.

Lands designated in accordance with the regulations in this subpart may be—

(a) Posted by means of entrance and boundary signs sufficient to make the lands and the reason for posting known on the ground.

(b) Identified on maps or diagrams sufficient to make the existence and locations known to the general public.

§ 1727.4 Procedure for designating areas and sites.

The sites and areas defined under § 1727.1 may be designated, named, and posted by the authorized officer, after consultation and coordination with the authorized users and any other parties, organizations, and units of government which may have an interest in such action.

§ 1727.5 Effect of designations.

(a) Designation under this section will have no effect upon established use or management of the areas or sites involved.

(b) If changes in the status of the land or use arrangements are desired, such changes must be accomplished by—

(1) Segregation under the Classification and Multiple Use Act regulations in Part 2410 of this chapter;

(2) Withdrawal or reservation under regulations in Subpart 2311 of this chapter or other appropriate authority;

(3) Modification of existing use arrangements, to the extent authorized by existing authority and regulations, such as Subchapter D—Range Management (4000) of this chapter for livestock grazing.

CHARLES F. LUCE,
Acting Secretary of the Interior.

OCTOBER 25, 1966.

[F.R. Doc. 66-11792; Filed, Oct. 28, 1966; 8:46 a.m.]

Circular No. 2217

GRAZING REGULATIONS for the PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR
Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT
Boyd L. Rasmussen, Director

September 1966

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts), provides regulations (pursuant to Section 15 of the Taylor Grazing Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts because of their scattered location pattern.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within grazing districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

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4115.2–5 Range improvements and contributions.
4115.2–6 Pledge of licenses and permits as security for loans.

AUTHORITY: The provisions of this Part 4110 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

SOURCE: The provisions of this Part 4110 appear at 29 F.R. 4602, Mar. 31, 1964, unless otherwise noted.

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promtoe the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k)(1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during

all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of

the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 4110.0-5 (k)(1)) or water (§ 4110.0-5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2-3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1-1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1-2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year

period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit

or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands: The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increase.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have

been imposed to reach the grazing capacity of a particular allotment or range area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 **Reduction.**

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or

proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with subpart 2412 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period,

after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecing nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the

State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The co-chairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash,

property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licenses and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided*, That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to

the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficent, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3(a).

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–3 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under § 4111.4–3 (a) (3), (c), and 9239.3–2 (e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use li-

cense, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner termi-

nated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for

crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; modification in fees due.* No license or permit shall be issued or renewed until payment of all fees due the United States under these regulations has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in full in advance before grazing use is authorized. Grazing privileges may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make a change in authorized grazing use must file, in advance, a written request for such changes with the District Manager. If the District Manager approves the request he will issue an adjusted fee notice.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee

or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for per-*

mits. An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant m. y present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii)(*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, notwithstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the

loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(b) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the

extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the range manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the range manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the range manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been willful and the range manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the range manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which pro-

hibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the range manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c)(2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c)(2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as

practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c)(2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the range manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

SUBCHAPTER A—GENERAL MANAGEMENT
(1000)

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

Subpart—1853 Grazing Proceedings

AUTHORITY: The provisions of this Subpart 1853 issued under sec. 2, 48 Stat. 1270, 43 U.S.C. 315a.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a deci-

sion. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the

opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

Sec.
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4122.6 Cancellation.
4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.
4122.8 Appeals; filing.

AUTHORITY: The provisions of this Part 4120 issued under sec. 2, 48 Stat. 1270; 43 U.S.C. 315a.

Subpart 4122—Grazing Leases (Sec. 15—Taylor Grazing Act)

§ 4122.0–3 Authority.

Section 15 of the act of June 28, 1934 (48 Stat. 1275), as amended, authorizes the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands outside of established grazing districts in the continental United States only.

§ 4122.0–5 Definitions.

(a) "Secretary" means Secretary of the Interior.

(b) "Director" means Director, Bureau of Land Management.

(c) "State Director" means the proper State Director, Bureau of Land Management.

(d) "Manager" means manager of the proper land office. Where there is no land office, it means the Director, Bureau of Land Management.

(e) "Signing officer" means the Government official who has been duly authorized to issue a grazing lease.

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. If there is no land office or other field office in the State, it means the office of the Director, Bureau of Land Management, Washington 25, D.C.

(g) "The act" means the act of June 28, 1934 (48 Stat. 1269), as amended.

§ 4122.1 Conditions.

§ 4122.1–1 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant

(a) Is a citizen of the United States, or

(b) Has filed a declaration of intention to become a citizen: *Provided*, That an applicant who has filed such declaration but has not filed a petition for naturalization before a court of competent jurisdiction within seven years from the

date of filing the declaration or, having filed such petition, has failed to attain citizenship within a reasonable time thereafter and is unable to show any satisfactory reason for such failure, shall be disqualified to receive a grazing lease or any renewal of an existing lease until he has actually attained citizenship, or

(c) Is a group, association, or corporation which is authorized to conduct business under the laws of the State in which the lands applied for are located and the controlling interest in which is vested in a citizen or citizens or persons who would be qualified as individual applicants under paragraphs (a) and (b) of this section.

§ 4122.1–2 Classes of applicants; preference rights.

The act, as amended, provides for the issuance of grazing leases to classes of applicants in the following order:

(a) Preference-right leases to applicants who are the owners, homesteaders, lessees, or other lawful occupants of lands contiguous to or cornering on an isolated or disconnected tract embracing 760 acres or less for the whole of such tract, upon the terms and conditions prescribed by the Secretary, provided the preference-right is asserted during a period of 90 days after such tract is offered for leases.[1]

(b) Preference-right leases to applicants who are owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit the proper use of such contiguous lands.

(c) Leases where no preference-right applicant is involved.

§ 4122.2 Application for lease.

§ 4122.2–1 Applications.

An application for lease shall be executed in triplicate on a form approved by the Director and filed in triplicate in any field office of the Bureau of Land Management in the state in which the lands applied for are situated.

§ 4122.2–2 Filing fee.

A filing fee of $10 will be charged for each grazing lease application, including an application arising out of the assignment of leased lands, when it embraces in whole or in part lands which are not already under lease by the applicant or by the assignor on the date of filing such application.

§ 4122.2–3 No right conferred by application prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.

§ 4122.2–4 Action on defective application or where the lands applied for are not subject to grazing leasing.

Upon the filing of any application, the officer receiving it may require any defects in the application to be cured or additional information to be provided. The signing officer may reject any application if the applicant fails to cure defects in the application within the time allowed, which period shall not be less than thirty days from the date of receipt of notice of such defects by the applicant. If the application must be rejected because of the status of the land for which application is made as where land is in an allowed entry, oth-

[1] Where the lands applied for include the even-numbered sections within the limits of a railroad grant, even though in the aggregate such lands exceed 760 acres, each such section will be considered as an isolated or disconnected tract within the meaning of this provision. The difference between the higher preference right accorded under this paragraph and the preference accorded under paragraph (b) of this section is that the applicant is not required to demonstrate that the public lands are necessary for the proper use of the contiguous or cornering lands, except where there are conflicting applications of the same class of applicants.

By Departmental Notice of July 31, 1937, all vacant, unreserved and unappropriated public lands, exclusive of Alaska, not included in an established grazing district, were then offered for lease under section 15; all lands not then subject to lease under section 15 because of their appropriation or reservation, were offered for lease as of the date any such lands first became subject to lease.

erwise appropriated or reserved and not subject to lease under the act, or not public land, a manager, if his office has land status, or a signing officer shall reject the application.

§ 4122.2–5 Conflicting applications.

In those cases where more than one applicant applies for the same land and where it appears that a division of the lands should be made, such conflicting applicants will be given an opportunity to agree to a division of the lands prior to a determination by the signing officer as to the disposition of such conflicting applications or division of the lands. After a division of the range has been made either by agreement between applicants which is acceptable to the signing officer or by determination of the signing officer where there is no acceptable agreement, any conflicting applications or protests filed subsequent thereto will be rejected.

§ 4122.2–6 Protests.

Protests against the approval of an application for a lease should be filed in the same manner and number of copies as applications for a grazing lease, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protests and should be accompanied by evidence of service of a copy of the protest on the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protest is filed, the protest should also be accompanied by an application for a grazing lease.

§ 4122.3 Leases.

§ 4122.3–1 Issuance of leases.

(a) *Conditions.* The lease will be executed by the signing officer and transmitted to the lessee only after final action is taken on any protests or timely appeals which may have been filed. The applicant's signature to the application shall be considered to be his signature to and his acceptance of the lease when executed by the signing officer, without prejudice to the applicant's right to appeal from the disallowance of his application as to any part of the lands applied for or from the issuance of a lease for a shorter term than that applied for.

(b) *Term.* A lease may be issued for a period of not more than 10 years. Renewals may be for periods of not more than 10 years, upon such terms and conditions as may then be prescribed.

(c) *Application for renewals.* An application for renewal of lease should be executed and filed in triplicate on a form approved by the Director at least 90 days prior to the expiration of the lease. The application may also include a request for the consolidation of other outstanding grazing leases held by the lessee. Such application does not confer on the lessee any preference right to a renewal but will, however, authorize the exclusive grazing use of the lands by the lessee in accordance with the provisions of the lease pending final action on the application for renewal.

(d) *Requirements and stipulations.* The lease will provide for an allowance of forage for wildlife, and within the discretion of the signing officer the number of livestock to be grazed, proper grazing season or reservations for authorized trailing across the land, and will contain the standard provisions set forth in the combined application and lease form, together with any other terms, conditions, or reservations which the signing officer in his discretion may deem necessary and proper.

(e) *Subleases.* No part of the leased lands may be subleased.

§ 4122.3–2 Leases of withdrawn or reserved lands; preference right leases for lands restored from withdrawal.

(a) The signing officer may issue leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[2] if the use of the land for grazing is not inconsistent with the purposes of the withdrawal. Lands included in stock drive-

[2] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of February 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, act of December 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the Cooperative Agreement of February 28, 1945, will, upon restoration from the reclamation withdrawal become subject to the provisions of paragraph (b) of this section.

way and public water reserve withdrawals may be leased in accordance with § 2321.3 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the signing officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored lands previously used by him. The preference right must be asserted and an application for lease on a form approved by the Director (see § 4122.2–1) must be filed not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The new lease will be dated as of the first day following the end of such current lease year, or as of the date of its issuance, in the discretion of the signing officer and for such term as he may determine.

§ 4122.3–3 Rentals, schedule of grazing fees; billing notices; effect of failure to pay.

(a) The annual rental charge for the use of the leased land will be based on the number of acres under lease, the estimated grazing capacity in AUMs (animal unit months), and the rate per AUM indicated in the then-current schedule of grazing fees established by the Director, Bureau of Land Management. The schedule of grazing fees will be established and may be modified, revised, or amended as the Director may determine from time to time and notice thereof shall be published in the FEDERAL REGISTER. The schedule rate will be effective (1) immediately as to new leases issued after date of publication; (2) 30 days after publication as to existing leases, the rental period of which begins after the 30-day period. The minimum rental on a lease shall not be less than $1 per annum.

(b) Rental groups: (1) Where the rental charge for a new lease is $50 or less for the full term of the lease, the entire amount shall be paid in advance and the rental charges will not be revised during the term of the lease. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(2) Where the rental for the entire lease term exceeds $50 and the rental for the first three-year period is $100 or less, the total amount for such three-year period shall be paid in advance. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5. Rental charges may be revised at the end of each three-year period based on the grazing fee schedule then in effect. Billing notices will be issued prior to the termination of each three-year period and the rental is due and payable upon receipt of the billing notice.

(3) Where the amount of the rental charge for the first three-year period would exceed $100, the rental shall be charged and paid annually based on the then effective grazing fee schedule. A billing notice for the amount of such annual rental will be sent each lessee in advance and is due and payable upon receipt. No part of the rental paid will be refunded because of cancellation, relinquishment or assignment, except as provided in §§ 4122.5–3 and 4122.3–5.

(c) Effect of failure to pay: The first rental payment required under a proposed lease in accordance with this section shall be made within 10 days from receipt of the lease form; if not paid within such time the lease shall be null and void and of no effect and all rights of the proposed lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods as required by paragraph (b) (2) or (3) of this section are payable in advance. In any event, if such payment is not received in the proper office by the last day of the current lease period, or within 10 days of lessees' receipt of the billing notice whichever is the later, then the lease shall be considered as cancelled and all

rights thereunder terminated as of the end of such current lease period.

(d) No refund of rentals properly paid in accordance with the regulations in this part and the terms of the lease will be made because of a failure to use the grazing privileges granted by the lease, except that during periods of range depletion due to severe drouth or other natural causes or in case of a general epidemic of disease during the life of the lease the Director will in his discretion remit, refund, reduce in whole or in part, or postpone the payment of rentals for such period of depletion of general epidemic.

§ 4122.3–4 Assignment of lease.

The lessee may assign the lease only with the consent of the signing officer. The proposed assignment must be filed with the signing officer within 90 days from date of its execution, and shall contain all the terms and conditions agreed upon between the parties, and the assignee's agreement to be bound by the terms of the lease, together with triplicate copies of the combined application and lease form as approved by the Director, properly executed by the assignee, setting forth all the data required thereby. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

§ 4122.3–5 Lease lands subject to disposition; compensation to lessee for loss of improvements.

(a) Lands embraced in a grazing lease are subject to disposition under the provisions of the Act of June 28, 1934 (48 Stat. 1272, 1274), as amended, or other public land laws. Before any application for such disposition is allowed, evidence must be furnished that the applicant has agreed to compensate the lessee and the United States for any grazing improvements placed on the lands under the authority of the lease, permit, or cooperative agreement in an amount and manner to be mutually agreed upon. If such improvements have been constructed in whole or in part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lien or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. If the parties are unable to agree as to the amount, manner, and time for compensation for such improvements, the amount, manner, and time shall be fixed by the authorized officer. The failure of the applicant to comply with the agreement or the conditions fixed by the authorized officer shall be just cause for cancellation of any right or interest in the lands acquired by the applicant by reason of the allowance of his application.

(b) Where part of the leased lands are disposed of as provided by this section, the subsequent annual rental charges will be reduced proportionately to reflect the loss of the lands from the leasehold. Such reduced rentals shall apply to rentals for the lease years commencing subsequent to the notice of such reduction.

§ 4122.4 Construction, maintenance, and removal of improvements.

§ 4122.4–1 Permit required.

After the issuance of a lease, the lessee may fence the lands or any part thereof, develop water by wells, tanks, water holes, or otherwise, and make or construct other improvements for grazing or stock raising purposes, so long as such improvements do not impair the value of the lands or interfere with other uses: *Provided,* That a permit or cooperative agreement is obtained under the procedure set forth in this section. The lessee will be required to comply with the provisions of the laws of the state in which the leased lands are located with respect to the cost and maintenance of fences.

§ 4122.4–2 Applications for permits and cooperative agreements.

Applications for permits, cooperative agreements, or arrangements to construct and maintain range improvements shall set forth the location of such improvements by legal subdivision of the

public land survey, the necessity, use, cost, and description of such improvements, item by item, shall designate the time and manner of their construction, the period of use, the method of operation, protection, repair, removal, or other disposition, and shall include any other pertinent information. When necessary to explain properly the improvements and matters connected therewith, the application shall be accompanied by a sketch of the improvements with specifications and a map showing the location of the improvements. Applications for a permit shall be made on a form approved by the Director and shall be filed in triplicate with the signing officer. Application for a cooperative agreement shall be made on a form approved by the Director.

§ 4122.4–3 Action on the application.

Action will be taken on the application by the signing officer. If the application is approved, the signing officer will issue a permit or enter into a cooperative agreement for the construction and maintenance of the improvements which have been approved.

§ 4122.4–4 Removal of improvements.

(a) Upon the expiration of the lease or its earlier termination, the signing officer may in his discretion and upon written application filed by the lessee not more than 30 days after date of such expiration or termination, require a proposed subsequent lessee, prior to the execution of a new lease, to agree to compensate the lessee for any grazing improvements of a permanent nature that have been placed upon the leased lands under authority of a section 15 lease executed prior to November 4, 1948, or thereafter, under a permit issued under § 4122.4–2. The amount of such compensation shall be determined in accordance with the procedure set forth in § 4122.3–5. The failure of the subsequent lessee to pay the lessee in accordance with such agreement shall be just cause for cancellation of the subsequent lessee's lease.

(b) The lessee will be allowed three months from the date of expiration or termination of the lease within which to remove such improvements as are not disposed of in the manner set forth above; if not removed or otherwise disposed of within the said period such improvements shall become the property of the United States. No improvements may be removed at any time the lessee is in default with respect to the lease.

§ 4122.5 Supervision and management of leased lands.

§ 4122.5–1 Access.

The issuance of a grazing lease does not alter or restrict the right of access across the leased lands by licensed hunters or fishermen or restrict their right to hunt and fish on such lands in accordance with the laws of the United States or of the state in which the lands are located, nor may the lessee interfere with such rights. Nor shall such lease restrict or limit prospecting, locating, developing, mining or patenting the mineral resources in the leased lands; miners, prospectors and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased lands.

§ 4122.5–2 Inspection of leased premises.

The land described in the lease shall be subject to inspection at all reasonable times by duly authorized representatives of the Department of the Interior. Other Federal agents, as well as game wardens, shall be permitted access to the lands in connection with necessary official business.

§ 4122.5–3 Reduction in leased area; adjustment of grazing use to conform with changes in grazing capacity.

The leased area may be reduced if it is determined that such area is required for the protection of sources of water supply to communities, or for camping places, stock driveways, roads and trails, or town sites, or for feeding grounds near communities for the use of domestic livestock or near the slaughtering or shipping points for use of stock to be marketed or for other public purposes; the authorized grazing use may be adjusted to conform to changes in grazing capacity estimates. In the case of any such reduction or adjustment, a proportionate adjustment will be made in the rental for the lease years commencing subsequent to the notice of such reduction or adjustment.

§ 4122.5–4 Temporary closing of leased area.

The State Director, in his discretion, may close temporarily to grazing, por-

tions of the leased lands whenever, because of depletion of the vegetal cover due to drought, epidemic, fire, or any other cause, such action is necessary to restore the forage on the range to its normal condition. Such temporary closing will not operate to exclude such lands from the lease.

§ 4122.5–5 Crossing permits.

Upon application filed with the authorized officer by any person showing the necessity for crossing the Federal land with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

§ 4122.5–6 Trespass.

Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this Part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. (See § 9239.3–1 of this chapter for detailed trespass regulations.)

§ 4122.6 Cancellation.

Except as otherwise provided in § 4122.3–3, if the lessee shall fail to comply with any of the provisions of the regulations in this part or of the lease or of any cooperative agreement on a form approved by the Director entered into with the Bureau of Land Management for the benefit of the lease, and such default shall continue for 30 days after service of written notice thereof, or if the lease was issued improperly through error with respect to a material fact or facts, the lease may be terminated and cancelled by the authorized officer.

§ 4122.7 Pledge of leases as security for loans; applications for extension of lease by borrower-lessee.

(a) A lease may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the authorized officer a written statement concerning the status of the grazing lease and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) An application by a borrower-lessee for an extension of the lease term should be executed and filed in triplicate on a form approved by the Director. When it appears that such extension will be in accordance with applicable law and not contrary to the public interest, the signing officer in his discretion may extend the lease for a period not to exceed 10 years from the date of the loan subject to such terms and conditions as are then provided by the regulations in this part, and by the signing officer.

(c) If the property of the lessee which was the basis for the granting of a preference right is acquired by the lending agency through foreclosure or otherwise, such agency or its occupants of the property or a purchaser of the property from the agency, if qualified, may apply on a form approved by the Director to be recognized as the new lessee. If, in selling the property, the lending agency takes back the mortgage on the property the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files in the office of the authorized officer notice that it has made a loan and has accepted a grazing lease as security therefor, in conformity with the provisions of this section, such agency will be advised of any adverse action taken affecting the lease, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the Bureau or any of its employees.

§ 4122.8 Appeals; filing.

An appeal from any decision rendered pursuant to §§ 4122.0 to 4122.8, inclusive, may be taken to the Director and the Secretary, in accordance with appeals and contests (Parts 1840 and 1850 of this chapter). The appeal should be filed with the officer who rendered the decision.

SUBCHAPTER I—TECHNICAL SERVICES (9000)

Group 9200—Protection

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

AUTHORITY: The provisions of this Part 9230 issued under R.S. 2478; 43 U.S.C. 1201.

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circulars 2190 and 2213.

GPO 850-334

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular 2218]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

OFFICE HOURS OF LAND OFFICES; PLACE FOR FILING

The heading of § 1821.2–1 is revised, paragraph (b)(1) thereof is revoked and a new paragraph (c) is added as follows:

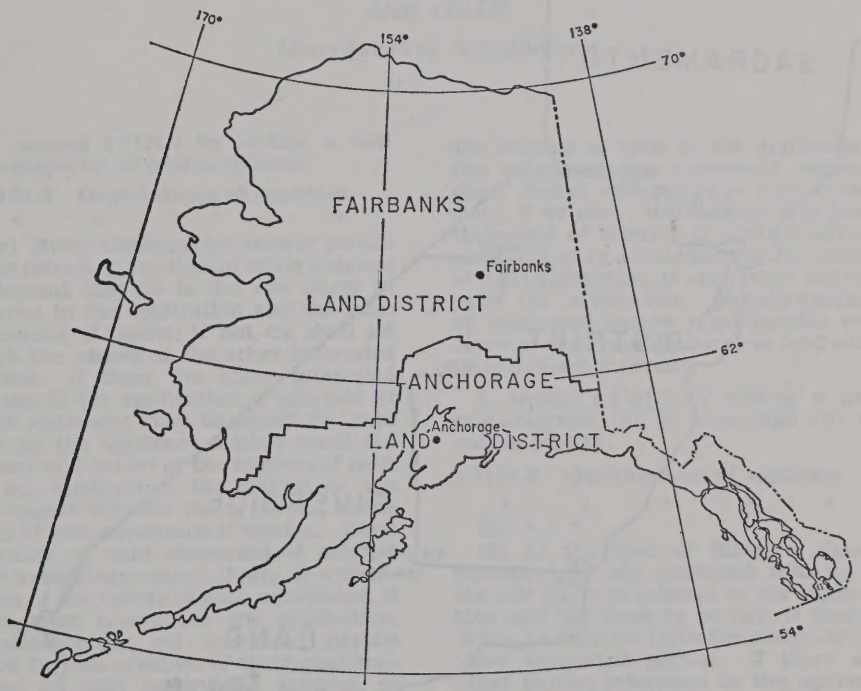
§ 1821.2–1 Office hours of land offices; place for filing.

* * * * * * *

(c) Copies of forms may be obtained from any of the land offices. However, completed forms and other land office filings must be made in the proper land office. Location of the land offices and area of jurisdiction of each office are as follows:

Land office	*Area of jurisdiction*
Anchorage Land Office, 555 Cordova Street, Anchorage, Alaska 99501.	Southern Alaska.[1]
Fairbanks District and Land Office, 516 Second Avenue, Fairbanks, Alaska 99701.	Northern Alaska.
Arizona Land Office, Federal Building, Phoenix, Ariz. 85025	Arizona.

[1] See diagram below for division line.



FOOTNOTE 1.

Riverside District and Land Office, 1414 Eighth Street, Riverside, Calif. 92502.	Southern California.
Sacramento Land Office, Federal Building, 650 Capitol Mall, Sacramento, Calif. 95814.	Northern California.[2]
Colorado Land Office, Federal Building, 1961 Stout Street, Denver, Colo. 80202.	Colorado.
Eastern States Office, 7981 Eastern Avenue, Silver Spring, Md. 20910.	Arkansas, Iowa, Louisiana, Missouri, Minnesota (minerals only), and all States east of the Mississippi River.
Idaho Land Office, Federal Building, Boise, Idaho 83701	Idaho.
Montana Land Office, Federal Building and U.S. Courthouse, 316 North 26th Street, Billings, Mont. 59101.	Montana, North Dakota, South Dakota, and Minnesota (except for minerals).
Nevada Land Office, Federal Building and U.S. Courthouse, 300 Booth Street, Reno, Nev. 89505.	Nevada.

Published in 31 F.R. 15541, December 9, 1966.

Circular Distribution List

Land office	*Area of jurisdiction*
New Mexico Land Office U.S. Post Office and Federal Building, South Federal Place, Santa Fe, N. Mex. 87501.	New Mexico, Oklahoma and Texas.
Oregon Land Office, 729 Northeast Oregon Street, Portland, Oreg. 97232.	Oregon and Washington.
Utah Land Office, Federal Building, Salt Lake City, Utah 84111.	Utah.
Wyoming Land Office, U.S. Post Office and Courthouse, 2120 Capitol Avenue, Cheyenne, Wyo. 82001.	Wyoming, Kansas and Nebraska.

[2] See diagram below for division line.

FOOTNOTE 2.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 1, 1966.

[F.R. Doc. 66-13157; Filed, Dec. 8, 1966; 8:45 a.m.]

GPO 832-175

Repl. by C-2321

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2219]

PART 3130—COAL LEASES, PERMITS AND LICENSES

PART 3140—POTASSIUM PERMITS AND LEASES

PART 3150—SODIUM PERMITS AND LEASES: USE PERMITS

PART 3160—PHOSPHATE LEASES; PROSPECTING PERMITS AND USE PERMITS

PART 3180—SULPHUR PERMITS AND LEASES

Miscellaneous Amendments

1. Amend § 3131.2 by adding a new paragraph (e) to read as follows:

§ 3131.2 Qualifications of applicant.

* * * * *

(e) Every applicant for lease or permit must submit at the time of filing a signed statement that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other interested parties in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

2. Amend §3141.2 by adding a new subparagraph (5) to paragraph (b) to read as follows:

§ 3141.2 Qualifications of applicant.

* * * * *

(b) * * *

(5) At the time of filing, a signed statement by the applicant that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement, if written. Such separate or joint statement of interest or written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

3. Amend § 3151.2 by adding a new subparagraph (5) to paragraph (b) to read as follows:

§ 3151.2 Qualifications of applicant.

* * * * *

(b) * * *

(5) At the time of filing, a signed statement by the applicant that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest or written agreement, if any, or a statement of the nature of such agreements, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

4. Amend § 3161.2 by adding a new subparagraph (5) to paragraph (b) to read as follows:

Published in 31 F.R. 16272, December 20, 1966 - Effective 30 days after publication.

Circular Distribution List

§ 3161.2 Qualifications of applicant.

* * * * *

(b) * * *

(5) At the time of filing, a signed statement by the applicant that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

* * * * *

5. Amend § 3181.2 by adding a new subparagraph (5) to paragraph (b) to read as follows:

§ 3181.2 Qualifications of applicant.

* * * * *

(b) * * *

(5) At the time of filing, a signed statement by the applicant that he is the sole party in interest in the application and the lease or permit, if issued; if not, he shall set forth the names of the other interested parties. If there are other parties interested in the application, a separate or joint statement must be signed by them and by the applicant setting forth the nature and extent of the interest of each in the application, the nature of the agreement between them, if oral, and a copy of such agreement if written. Such separate or joint statement of interest and written agreement, if any, or a statement of the nature of such agreement, if oral, must accompany the application. Simultaneously, all interested parties must furnish evidence of their qualifications to hold such lease interest or permit.

STEWART L. UDALL,
Secretary of the Interior.

DECEMBER 14, 1966.

[F.R. Doc. 66-13597; Filed, Dec. 19, 1966; 8:46 a.m.]

GPO 832-625

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

[Circular 2220]

MISCELLANEOUS AMENDMENTS TO CHAPTER

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

PART 1820—APPLICATION PROCEDURES

1. Section 1821.2–3 is amended to read as follows:

§ 1821.2–3 Simultaneous applications.

All applications, which term includes offers to lease, filed pursuant to the regulations in any part of this chapter will be regarded as having been filed simultaneously within the meaning of this section where by reason of an order of restoration or opening, or a notice of the filing of a plat of survey or resurvey, they are filed in the manner and within the period of time for the filing of simultaneous applications provided for in such order or notice. When no order of restoration or notice of opening is involved, the applications will be treated as having been filed simultaneously if they are received by the proper land office (see § 1821.2–1 of this chapter), over the counter at the same time, or are received in the same mail. Unless otherwise provided in a particular order, or regulation, applications which are filed simultaneously will be processed in accordance with the following rules:

(a) All such applications received will be examined and appropriate action will be taken on those which do not conflict in whole or in part.

(b) All such applications which conflict in whole or in part will be included in a drawing which, except as provided in paragraph (c) of this section will fix the order in which the applications will be processed.

(1) Notwithstanding the provisions of paragraph (a) of this section, the priorities of all applications or offers to lease made and filed in accordance with the provisions of § 3123.9 of this chapter will be determined by public drawing whether or not they are in conflict.

(c) All applications included in the drawing will be subject to any priority to which any particular applicant may be entitled on account of a preference right conferred by law or regulations.

2. Paragraph (c) of § 1821.3–2 is amended to read as follows:

§ 1821.3–2 Officers qualified.

* * * * *

(c) The papers in cases arising under the statutes above specified must be filed in the proper land office (see § 1821.2–1 of this chapter). An application is not acceptable if dated more than 10 days before being deposited in the mails for filing in the appropriate office.

PART 1850—HEARINGS PROCEDURES

Section 1852.1–3 is amended to read as follows:

§ 1852.1–3 Initiation of contest.

Any person desiring to initiate a private contest must file a complaint in the proper land office, (see § 1821.2–1 of this chapter). The contestant must serve a copy of the complaint on the contestee not later than 30 days after filing the complaint and must file proof of such service, as required by § 1850.0–6(e), in the office where the complaint was filed within 30 days after service.

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

PART 2020—SPECIAL RESOURCE VALUES

Paragraph (a) of § 2022.3 is amended to read as follows:

§ 2022.3 Petitions for restoration.

(a) Petitions for restoration of lands withdrawn or classified for power purposes, under the provisions of section 24 of the Federal Power Act, must be filed, in duplicate, in the proper land office (see § 1821.2–1 of this chapter). No particular form of petition is required, but it must be typewritten or in legible handwriting. Each petition must be accompanied by a service charge of $10 which is not returnable.

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Circular Distribution List

PART 2210—OCCUPANCY

1. Paragraph (a) of § 2211.6–2 is amended to read as follows:

§ 2211.6–2 Petitions and applications.

(a) A person who desires to enter public lands under the enlarged homestead laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands have been already classified and opened to entry under the enlarged homestead laws, only an application should be filed. The documents must be filed in the proper land office (see § 1821.2–1 of this chapter).

* * * * *

2. Paragraph (a) of § 2214.5–2 is amended to read as follows:

§ 2214.5–2 Applications.

(a) Claimants under the act of 1925 have a preferred right of application for a period of 90 days from the date of filing of the plat of survey of lands claimed by them. Applications for public lands under the act of 1954 must be filed within 1 year after August 24, 1954, or 1 year from the date of the official plat or resurvey, whichever is later. All applications must be filed in the proper land office (see § 1821.2–1 of this chapter).

* * * * *

3. Paragraph (a) of § 2215.2 is amended to read as follows:

§ 2215.2 Applications.

(a) Applicants must file applications on or before October 23, 1967, in the proper land office (see § 1821.2–1 of this chapter).

* * * * *

PART 2220—GRANTS

1. Paragraph (c) of § 2221.3–3 is amended to read as follows:

§ 2221.3–3 Use of rights.

* * * * *

(c) *Selection of land and application.* The owner of a soldier's additional right who desires to personally exercise the same must first select a tract of land and then file formal application therefor in the proper land office (see § 1821.2–1 of this chapter), accompanying the same with the evidence as to existence and ownership of the right as indicated in § 2221.3–4.

2. Paragraph (a)(1) of § 2226.1–1 is amended to read as follows:

§ 2226.1–1 Petitions and applications.

(a) *Filing and fees.* (1) A person who desires to enter public lands under the desert land laws must file an application together with a petition on forms approved by the Director, properly executed. However, if the lands described in the application have been already classified and opened for disposition under the desert land laws, no petition is required. The documents must be filed in the proper land office (see § 1821.2–1 of this chapter).

* * * * *

PART 2230—SPECIAL USES

1. Paragraph (b)(4) of § 2234.1–1 is amended to read as follows:

§ 2234.1–1 Scope; definitions.

(b) * * *

(4) "Manager" means manager of the land office for the district in which the lands applied for are situated (see § 1821.2–1 of this chapter).

* * * * *

2. Paragraph (e) of § 2235.1–2 is amended to read as follows:

§ 2235.1–2 Use by public agencies—Federal Airport Act of May 13, 1946.

* * * * *

(e) *Publication and posting.* Before a transfer of fee title to public lands is made, the Bureau of Land Management will require the applicant to publish, at its own expense in a newspaper of general circulation in the county in which the land is situated, a notice stating that a request has been made by the Administrator on behalf of the applicant (giving its name and address) to acquire title to public lands (describing them) under the act, for the purpose of carrying out a project under the act, or for the operation of a public airport, as the case may be, and that the purpose of the notice is to give persons claiming an interest in the land or having bona fide objections to the proposed transfer an opportunity to file within 30 days after the date of the first publication, a protest, together with evidence that the protest has been served on the applicant. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue, if a weekly, in four consecutive issues, and if a semiweekly or triweekly, in any of the issues on the same day each week for 4 consecutive weeks. The notice will also be posted during the entire period of publication in the proper land office (see § 1821.2–1 of this chapter). No transfer will be made until proof of publication and posting of the notice has been filed.

PART 2240—SALES AND EXCHANGES

1. Paragraph (f) of § 2243.0–5 is amended to read as follows:

§ 2243.0–5 Definitions.

* * * * *

(f) The term "proper land office" means the land office of the Bureau of Land Management for the State or Land District in which the lands are situated (see § 1821.2–1 of this chapter).

* * * * *

2. Paragraph (c)(3) of § 2243.2–1 is amended to read as follows:

§ 2243.2–1 General.

* * * * *

(c) * * *

(3) The term "proper land office" means the land office of the Bureau of Land Management for the State or Land District in which the lands are situated (see § 1821.2–1 of this chapter).

* * * * *

3. Paragraph (a) of § 2244.6–2 is amended to read as follows:

§ 2244.6–2 Procedures.

(a) *Preliminary negotiations; informal application and procedure theron.* All preliminary negotiations relating to an exchange under the above act are to be conducted with the Fish and Wildlife Service. Any owner of land subject to exchange who desires to take advantage of the privileges conferred by the said act, must file with the local representatives of the Fish and Wildlife Service, an informal application describing the privately owned land which is offered to the United States and the public land which is selected in exchange therefor. The land offered to the United States must be chiefly valuable for migratory bird or other wildlife refuges, while the land selected in exchange must be unappropriated and unreserved nonmineral public land of the United States, which may be surveyed or unsurveyed. If the Director, Fish and Wildlife Service is of the opinion that the offered land is chiefly valuable for migratory bird or other wildlife refuges, he will advise the applicant thereof, together with his determination as to the values of the offered and selected lands giving the prices thereof and whether in his opinion the exchange should be consummated and shall instruct the applicant to file in the proper land office (see § 1821.2–1 of this chapter).

* * * * *

4. Paragraph (b) of § 2244.7–1 is amended to read as follows:

§ 2244.7–1 North Dakota, South Dakota, Montana, and Washington.

* * * * *

(b) *Application for public lands in exchange for State lands.* Applications for public lands sought under the provisions of the act of May 7, 1932, must be filed by the proper officers of the State, in the proper land office (see § 1821.2–1 of this chapter).

(1) A statement as to the nonmineral and nonsaline character of the land applied for, and showing that said land is unappropriated and is not occupied by and does not contain improvements placed thereon by any Indian.

(2) A certificate of the selecting agent showing that the selection is made under and pursuant to the laws of the State.

(3) A corroborated statement must be furnished relative to springs and water holes upon the land applied for, in accordance with existing regulations pertaining thereto in §§ 2321.1–1 to 2321.1–2 in the case of all similar State selections.

(4) A statement that the land relinquished and the land selected are equal in value and as near as may be of equal area.

* * * * *

PART 2250—SPECIAL AREAS

Section 2254.1–3 is amended to read as follows:

§ 2254.1–3 Cash entries by purchasers at State sale.

Section 5 of the act of January 17, 1920 (41 Stat. 393; 43 U.S.C. 1045), provides that purchasers of unentered lands at such sales by the State have 90 days from the date of sale and purchasers of entered but unpatented lands have 90 days from the expiration of the period of redemption provided for in the drainage laws under which the lands were sold, no redemption having been made within which to pay $5 per acre, together with the usual fees and commissions both original and final, charged in entry of lands under the homestead laws, and make entry. The required payments and application for entry must be filed in the proper land office (see § 1821.2–1 of this chapter).

PART 2310—PROCEDURE

Paragraph (a) of § 2312.1–1 is amended to read as follows:

§ 2312.1–1 Notice of intention.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper land office (see § 1821.2–1 of this chapter).

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3000—INTRODUCTION

1. Section 3001.0–6 is amended to read as follows:

§ 3001.0–6 Place of filing.

Documents must be filed in the proper land office (see § 1821.2–1 of this chapter).

PART 3120—OIL AND GAS

2. Paragraph (b) of § 3123.1 is amended to read as follows:

§ 3123.1 Application.

* * * * *

(b) Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 1821.2–1 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

PART 3210—ACQUIRED LANDS LEASING ACT

Paragraph (b) of § 3212.4 is amended to read as follows:

§ 3212.4 Offer to lease and issuance of lease.

* * * * *

(b) Seven copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper land office (see § 1821.2–1 of this chapter). For the purpose of this part an offer will be considered filed when it is received in the proper office during business hours.

* * * * *

PART 3320—ACTS CONCERNING LIMITED AREAS

Section 3322.1–6 is amended to read as follows:

§ 3322.1–6 Form of lease.

Leases shall be issued on a form approved by the Director. A copy of this, as well as of every other form mentioned in this part, may be obtained from the appropriate land office (see § 1821.2–1 of this chapter).

PART 3440—SURVEYS OF MINING CLAIMS

Section 3440.1 is amended to read as follows:

§ 3440.1 Application for survey.

The claimant is required, in the first place, to have a correct survey of his claim made under authority of the proper cadastral engineer, such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. He is required to have a correct survey where patent is applied for and where the mining claim is in vein or lode formation, or covers lands not surveyed in accordance with the U.S. system of rectangular surveys, or where the mining claim fails to conform with the legal subdivisions of the federal surveys. Application for authorization of survey should be made to the appropriate land office (see § 1821.2–1 of this chapter).

SUBCHAPTER D—RANGE MANAGEMENT (4000)

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS)

Paragraphs (d) and (f) of § 4122.0–5 are amended to read as follows:

§ 4122.0–5 Definitions.

* * * * *

(d) "Manager" means manager of the proper land office (see § 1821.2–1 of this chapter).

* * * * *

(f) "Field office" means any office of the Bureau of Land Management, including the land office, near the lands applied for and in the State in which such lands are situated. (See § 1821.2–1 of this chapter).

* * * * *

CHARLES F. LUCE,
Under Secretary of the Interior.

DECEMBER 23, 1966.

[F.R. Doc. 66–14033; Filed, Dec. 30, 1966; 8:47 a.m.]

GPO 832-626

Repl. by C-2307

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2221]

PART 2230—SPECIAL USES

Subpart 2232—Recreation and Public Purposes Act

§ 2232.0–1 Purpose.

(a) Qualified applicants are permitted by the act to acquire available lands for use for any public purposes for which they are authorized by their creating authority to hold lands. Nonprofit associations and nonprofit corporations are permitted, in addition, to acquire lands for use for any recreational purpose consistent with their creating authority.

(b) No applicant can secure lands under the act, however, for any use authorized under any other public land law. This restriction does not apply to the use of lands for residence, business, recreation, and community-site purposes authorized by the act of June 1, 1938 (52 Stat. 609; 43 U.S.C. 682a, Subpart 2233) as amended.

§ 2232.0–3 Authority.

The act of June 14, 1926, as amended (43 U.S.C. 869; 869–4), authorizes the Secretary of the Interior, under specified conditions, to lease or sell lands for recreational and public purposes. This legislation is referred to as "the act" in the regulations of this part.

§ 2232.0–6 Qualified applicants.

The following are qualified to make applications under the act; States, Federal and State instrumentalities and political subdivisions, including counties and municipalities; and nonprofit associations and nonprofit corporations.

§ 2232.0–7 Lands subject to disposition.

The act is applicable to any public domain lands except (a) lands withdrawn or reserved for national forests, nation parks and monuments, and national wildlife refuges and (b) Indian lands and lands set aside or held for use by or the benefit of Indians. The act is applicable to the Oregon and California Railroad revested grant lands and to the Coos Bay reconveyed wagon-road grant lands only insofar as it applies to leases of land to States and counties and to State and Federal instrumentalities and political subdivisions and to municipal corporations.

§ 2232.1 Procedures.

§ 2232.1–1 Applications for lands.

(a) Applicants under the act must submit an application accompanied by a petition properly executed on forms approved by the Director. If the lands have been already classified for disposition under the act, no petition is required. Each application must be accompanied by (1) three copies of a statement describing the proposed use of the lands, showing that the application involves an established or definitely proposed project, and giving as much detail concerning the plan of development and improvement of the project as is necessary to describe the project and its purpose adequately and the proposed disposition of any revenues to be realized from it and (2) a filing fee of $10. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter.

(b) The acreage applied for in any one application for patent cannot exceed 640 acres except that applications for patent for State park purposes may embrace as much as 6,400 acres, or where provided by law 12,800 acres.

§ 2232.1–2 Applications for transfer, change of use, for renewal of leases, and for new leases under the Act of June 20, 1966.

(a) (1) Applications under the act for permission to add to, or to change the use specified in a lease or patent, applications to transfer title or lease to a third party, applications for a new lease under section 2 of the Act of June 20, 1966 (80 Stat. 210), and applications for renewal of a lease must be filed in triplicate with the appropriate office of the Bureau of Land Management. No form is specified but the matter should be fully explained by the applicant.

(2) Applications for permission to add to or to change use must be accompanied by three copies of the showing required by § 2232.1–1.

(3) Applications for approval of transfers of title or lease must be accompanied by three copies of a form approved by the Director and executed by the proposed transferee in accordance with § 2232.1–1.

(4) Applications for renewal of leases must be accompanied by three copies of a statement showing, in detail sufficient to describe the situation adequately, the past use of the lands and the proposed use after renewal of the lease.

(5) Section 2 of the Act of June 20, 1966, authorizes the issuance of new leases in lieu of leases which were in force on June 20, 1966. Applications for new leases must be accompanied by consent of the lessee to cancellation of the existing lease upon the issuance of the new lease and by three copies of a statement showing (i) the need for a new lease and (ii) any changes in the terms and conditions of the lease which the applicant may desire.

(6) Each application must be accompanied by a filing fee of $10.

(7) Prior to approval of an application filed under subparagraph (2) of this paragraph, the land may be reappraised in accordance with § 2232.2–3 and the beneficiary required to make such payments as are found justified by such reappraisal.

(b) (1) Applications under section 4 of the act for permission to transfer title or to change the use in respect to land covered by any patent issued prior to June 4, 1954, must be submitted in conformance with this section.

(2) The land, however, will not be subject to reappraisal and the beneficiary will not be required to make any payment other than the filing fee.

§ 2232.1–3 Publications; protests.

(a) Applicants for patents under the act will be required upon demand to publish once a week for four consecutive weeks in accordance with § 1824.4 of this chapter, at their expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file in the appropriate office their objections to the issuance of patent under the applications. A protestant must serve on the applicant a copy of the objections and furnish evidence of such service.

(b) Such applicants must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

§ 2232.1–4 Classifications.

(a) Lands in Alaska classified under the act and lands in the States classified pursuant to the act under section 7 of the act of June 28, 1934 (48 Stat. 1272, 43 U.S.C. 315f), as amended, will be segregated from all appropriations, including locations under the mining laws, except as provided in the order of classification or in any modification or revision thereof.

(b) Classifications made pursuant to the act on the motion of the Government for which no application is filed within 18 months after issuance will be vacated and the land restored to its former status.

§ 2232.2 Dispositions.

§ 2232.2–1 General limitations and conditions.

(a) Applicants will not be granted title to or use of land under the act unless and until (1) the land is first classified as suitable for the purpose sought and not needed for any other public purpose or is not more valuable and suitable for some other use, including the development of power; and, (2) if the land is under the jurisdiction of any agency or instrumentality outside the Department of the Interior, that agency or instrumentality consents to the proposed disposition.

(b) Applicants will not be granted title to or use of land under the act except for an established or definitely proposed project. A definitely proposed project is a project which has been authorized by competent authority irrespective of whether or not it has been financed and otherwise fully implemented, providing that there exists the probability that it will be fully implemented within a reasonable time.

(c) No applicant in any one calendar year can receive under the act patents for land except in conformance with the following:

(1) Any State may acquire in its own name, or in the name of its State park agency, or in the name of any other agency having jurisdiction over the State park system of said State designated by the Governor of the State as its sole representative for acceptance of lands under this provision for recreational purposes, not more than 6,400 acres involving not more than three sites, except that should any State fail in any one calendar year to receive the maximum herein specified, other than small roadside parks and rest sites, additional conveyances may be made thereafter to that State pursuant to any application on file with the Secretary of the Interior on the last day of said year,

to the extent that the conveyances would not have exceeded the limitations of said year. In addition, any State may acquire, in its own name or in the name of an agency or instrumentality of such State not more than 640 acres for each of its programs involving public purposes other than recreation.

(2) Any political subdivision of a State and any nonprofit corporation or nonprofit association may acquire in its own name for recreational purposes not more than 640 acres and for public purposes other than recreation an additional 640 acres.

(d) No patent will be issued under the act unless and until the land is officially surveyed.

(e) All leases and patents issued under the act will reserve to the United States all minerals, together with the right to mine and remove the same under applicable laws and regulations to be established by the Secretary of the Interior.

(f) Municipal corporations cannot secure land under this act if it is not within convenient access to the municipality and within the same State as the municipality. Other qualified applicants cannot secure land outside of their political boundaries or other area of jurisdiction.

(g) No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to the National System of Interstate and Defense Highways (23 U.S.C.) will be issued under the regulations of this part, except in conformity with, and subject to, the national standards prepared and promulgated by the Secretary of Commerce. No lease or patent authorizing use of lands for erection and maintenance of advertising displays on public lands adjacent to any other highway will be issued under the regulations of this part if the proposed display would not conform with the standards or policies established by the appropriate State or local governmental entities which have authority to establish such standards or policies. Where the authorized officer finds that established standards or policies are insufficient in connection with any application under the regulations of this part adequately to promote the safety, convenience, and enjoyment of public travel, to protect the public investment in the highway or in the adjacent public lands, to preserve for the public significant scenic or other recreational values in the public lands, or otherwise to protect the public interest, he shall establish such additional standards as he may deem appropriate in the circumstances, giving due consideration to the need for directional and other official signs, the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof, and the interest of the traveling public in, and its need for, specific types of information.

§ 2232.2–2 Lease provisions.

(a) The term of leases under the act will be fixed by the authorized official but will not exceed 25 years. Leases will be renewable at the discretion of such official.

(b) Leases will be issued on a form approved by the Director and will contain the usual terms and conditions required by law, public policy, and, insofar as possible, by Department of the Interior procedure.

(c) Leases will contain such terms and conditions which the signing officer or the administering agency considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interests.

(d) Leases will be terminable by the authorized official upon failure of the lessee to comply with the terms of the lease, upon a finding that all or part of the land is being devoted to other than the use authorized by the lease, or upon a finding that the land has not been used by the lessee for the purpose specified in the lease for any consecutive period specified by the authorized official but not more than 5 years or less than 2 years.

(e) Leases will not be transferable except with the consent of the proper official. Transferees must meet all the qualifications of applicants under the act and will be subject to all the terms and conditions of the regulations in this part.

§ 2232.2–3 Price.

(a) Conveyances under the act for historic monument purposes will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations for other than historic monument purposes will be made at prices fixed through appraisal of the fair market value of the land, taking into consideration the purposes for which the lands will be used.

(c) All other sales will be made at prices fixed through (1) appraisal of the fair market value of the lands or otherwise, taking into consideration the purpose for which the land will be used or (2) any method which considers the purpose for which the land will be used.

(d) Annual rentals under leases will be fair and reasonable and will be based on the value of the lands as determined by the requirements of paragraphs (b) and (c) of this section.

(e) A patent applicant, when the land has been appraised, will be required to pay the full purchase price before the patent will be issued. The rental under a lease shall be payable in advance. Upon appraisal of the land, a lease applicant will be required to pay at least the first year's rental before the lease will be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term will be

returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

§ 2232.2–4 Patent provisions.

All patents under this act will contain a clause providing that if the patentee or its successor attempts to transfer title to or control over the lands to another or the lands are devoted to a use other than that for which the lands were conveyed, without consent of competent authority or prohibits or restricts, directly or indirectly, or permits its agents, employees, contractors, or subcontractors (including without limitation, lessees, sublessees and permittees), to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, or national origin, title shall revert to the United States. Transferees must meet all the qualifications of applicants under the act and will be subject to the terms and conditions of the regulations of this part.

§ 2232.2–5 Minerals; timber.

(a) Any minerals subject to the leasing laws reserved to the United States in the lands patented or leases under the terms of the act may be disposed of to any qualified person under applicable laws and regulations. Until rules and regulations are issued, other minerals are not subject to disposition or to prospecting except by an authorized Federal agency.

(b) A lessee under the act will not be permitted to cut timber from the leased lands without prior permission from the appropriate officer.

This Circular supersedes Circulars 1880, 2063, 2109, 2199, 2212, and portions of Circulars 2028 and 2110 relating to 43 CFR Part 254.

GPO 832-770

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2222]

PART 1810—INTRODUCTION AND GENERAL GUIDANCE

Subpart 1815—Disaster Relief

A new subpart is added to Part 1810, to read as follows:

Subpart 1815—Disaster Relief

Sec.

1815.0–5 Definitions.
1815.1 Extensions of time in public land matters.
1815.1–1 Authority.
1815.1–2 Application for relief.
1815.1–3 Requirements for relief.
1815.1–4 Length of extension of time.

§ 1815.0–5 Definitions.

(a) *Major disaster.* As defined in section 2 of the Disaster Relief Act of 1966 (80 Stat. 1316), hereinafter called "the Act," "major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to be of sufficient severity and magnitude warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments in alleviating the damage, hardship, or suffering caused thereby, and respecting which the governor of any State (or the Board of Commissioners of the District of Columbia) in which such catastrophe may occur or threaten certifies the need for disaster assistance and shall give assurance of expenditure of a reasonable amount of the funds of the government of such State, local governments therein, or other agencies, for the same or similar purposes with respect to such catastrophe.

§ 1815.1 Extensions of time in public land matters.

§ 1815.1–1 Authority.

Section 11 of the Act (80 Stat. 1321) authorizes the Secretary of the Interior to grant an extension of time to the holder of any lease, license, permit, contract, or entry on lands administered by the Bureau of Land Management where a major disaster has impeded timely fulfilment of requirements and where rights of other parties will not be prejudiced by such relief.

§ 1815.1–2 Application for relief.

(a) *Place of filing.* The application shall be filed in the proper land office (see § 1821.2–1 of this chapter).

(b) *Fees.* Application for an extension of time under this subpart must be accompanied by a nonrefundable service fee of $10.

(c) *Form of application.* No special form of application is required.

(d) *Contents of application.* An application for relief under this subpart shall state:

(1) The law under which the lease, license, permit, contract, or entry was issued.

(2) The date of issuance and any other identification number.

(3) The extent to which requirements had been fulfilled prior to the disaster.

(4) The nature of the disaster.

(5) The effect of the disaster on performance under the lease, license, permit, contract, or entry.

(6) An estimate of the time which will be needed to overcome the delay in performance caused by the disaster.

(7) Steps taken or to be taken to overcome the effects of the disaster and to assure that an extension of time will permit completion of performance.

§ 1815.1–3 Requirements for relief.

The authorized officer may grant relief where the following conditions are met:

(a) The obligations or work required by the lease, license, permit, contract, or entry were prosecuted timely and with due diligence up to the time of the occurrence of the disaster;

(b) The disaster which impeded prosecution of the work was a major disaster as defined in section 2 of the Act (80 Stat. 1316).

(c) The granting of relief by an extension of time will not prejudice the rights of other parties; and

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Circular Distribution List

(d) The granting of relief by an extension of time will not adversely affect the public interest.

§ 1815.1–4 Length of extension of time.

(a) The length of extension of time granted will be determined by the circumstances in each case. Consideration will be given to the condition in which the disaster left the applicant or the land involved, and sufficient time will be given to allow the applicant to fulfill the requirements of his lease, license, permit, contract, or entry.

CHARLES F. LUCE,
Under Secretary of the Interior.

FEBRUARY 14, 1967.

[F.R. Doc. 67–1892; Filed, Feb. 17, 1967; 8:47 a.m.]

GPO 834-477

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

GROUP 3100—PUBLIC DOMAIN LEASING

[Circular No. 2223]

LEASE BONDS

PART 3130—COAL LEASES, PERMITS AND LICENSES

1. Section 3132.3–1, including the heading is amended to read as follows:

§ 3132.3–1 Lease bond.

A compliance bond of not less than $1,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, (b) for each state in which the lessees hold leases or permits a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State, or (c) a bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued under this part pursuant to the Mineral Leasing Act, and also under Part 3210 of this chapter pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

PART 3140—POTASSIUM PERMITS AND LEASES

2. Section 3143.2–2 is amended to read as follows:

§ 3143.2–2 Lease bond.

A compliance bond of not less than $5,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, or (b) for each State in which the lessees hold leases or permits a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State, or (c) a bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued under this part pursuant to the Mineral Leasing Act, and also under Part 3210 of this chapter pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

PART 3150—SODIUM PERMITS AND LEASES: USE PERMITS

3. Section 3153.2–2 is amended to read as follows:

§ 3153.2–2 Lease bond.

A compliance bond of not less than $5,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, or (b) for each State in which the lessees hold leases or permits a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State, or (c) a bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued under this part pursuant to the Mineral Leasing Act, and also under Part 3210 of this chapter pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

PART 3160—PHOSPHATE LEASES; PROSPECTING PERMITS AND USE PERMITS

4. Section 3162.2 is amended to read as follows:

§ 3162.2 Lease bond.

A compliance bond of not less than $5,000 will be required prior to the issuance of a lease. In lieu of such bond the lessee may furnish (a) a collective bond in an amount not less than the total minimum coverage required if separate bonds for each lease were furnished, or (b) for each State in which the lessees hold leases or permits a statewide bond of not less than $25,000 which shall cover all leases and permits issued under this part in that State, or (c) a bond in the amount of $75,000 for full nationwide coverage of all leases and permits issued under this part pursuant to the Mineral Leasing Act, and also under Part 3210 of this chapter pursuant to the Mineral Leasing Act for Acquired Lands (30 U.S.C. sec. 351–359).

CHARLES F. LUCE,
Under Secretary of the Interior.

FEBRUARY 20, 1967.

[F.R. Doc. 67–2123; Filed, Feb. 24, 1967; 8:46 a.m.]

Published in 32 F.R. 3297, February 25, 1967 - Effective upon publication.

Circular Distribution List

This Circular supersedes Circular 2208.

GPO 833-831

Repl. by C-2265

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2224]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

TIMBER SALE ROADS

Basis and purpose. Notice is hereby given that pursuant to authority in the Secretary of the Interior by the Act of August 28, 1937 (50 Stat. 874) and the Act of July 31, 1947 (61 Stat. 681), 43 CFR 2234.2–3 is amended as set forth below.

The purpose of this amendment is to clarify the status of timber sale roads. Although it is customary for the Department of the Interior to publish its rules in proposed form, the public interest suggests that this regulation become effective immediately upon publication in the FEDERAL REGISTER.

Paragraph (b)(16)(ii) of § 2234.2–3 is amended to read as follows:

§ 2234.2–3 For tramroads and logging roads.

* * * * *

(b) *Over O&C and Coos Bay revested lands*—(1) * * *

(16) *Payment to the United States for road use.* * * *

(ii) Where the permittee receives a right to use a road constructed or acquired by the United States, which road is under the administrative jurisdiction of the Bureau of Land Management, the permittee will be required to pay to the United States a fee to be determined by the authorized officer who may also fix the rate at which payments shall be made by the permittee during his use of the road. The authorized officer shall base his determination upon the amortization of the replacement costs for a road of the type involved, together with a reasonable interest allowance on such costs plus costs of maintenance if furnished by the United States and any extraordinary costs peculiar to the construction or acquisition of the particular road. In the case of federally acquired or constructed access roads, an allowance representing a reasonable allocation for recreational or other authorized uses shall be deducted from the replacement costs of the road before the amortization item is computed. A similar allowance and deduction shall be made in cases involving roads constructed as a part of a timber sale contract when, and if, subsequent to completion of such contract any such road becomes subject to recreational or other authorized uses. In arriving at the amortization item, the authorized officer shall take into account the probable period of time, past and present, during which such road may be in existence, and the volume of timber which has been moved, and the volume of timber currently merchantable which probably will be moved from all sources over such road: *Provided, however,* That this subdivision shall not apply where the permittee transports forest products purchased from the United States through the Bureau of Land Management, or where payment for such road use to another permittee is required under this § 2234.2–3(b): *Provided further,* That where the United States is entitled to charge a fee for the use of a road, the authorized officer may waive such fee if the permittee grants to the United States and its licensees the right to use, without charge, permittee's roads of approximately equal value as determined under the methods provided in this subdivision and subparagraph (11)(ii) of this paragraph, as may be applicable.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

MARCH 16, 1967.

[F.R. Doc. 67–3198; Filed, Mar. 22, 1967; 8:49 a.m.]

Published in 32 F. R. 4414, March 23, 1967 - Effective upon publication.

Circular Distribution List

GPO 834-478

Repl. by C-2239

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2225]

PART 2240—SALES AND EXCHANGES

Subpart 2244—Exchanges

LANDS SUBJECT TO EXCHANGE

Subparagraph (2) of § 2244.9–1(d) is revised to read as follows:

§ 2244.9–1 O and C Lands.

* * * * *

(d) *Lands subject to exchange.* * * *

(2) Either party to an exchange may make reservations of minerals, easements, rights of use, or other interests and rights.

STEWART L. UDALL,
Secretary of the Interior.

MARCH 30, 1967.

[F.R. Doc. 67–3822; Filed, Apr. 6, 1967; 8:46 a.m.]

Published in 32 F.R. 5689, April 7, 1967 - Effective upon publication.

Circular Distribution List

GPO 834-986

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND MANAGEMENT (2000)

PART 2240—SALES AND EXCHANGES

Subpart 2244—Exchanges

Land Subject to Exchange

Repl. by C. 2307

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2226]

PART 2230—SPECIAL USES

Subpart 2232—Recreation and Public Purposes Act

PRICING FOR HISTORIC MONUMENTS

1. Sections 2232.2–3 (a), (b), and (c) are amended to read as follows:

§ 2232.2–3 Price.

(a) Conveyances under the act for historic monument purposes to a State, county, or other State or Federal instrumentality or political subdivision, will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations will be made at prices fixed through appraisal of the fair market value of the land, taking into consideration the purposes for which the lands will be used.

(c) All other sales will be made at prices fixed through appraisal of the fair market value of the lands or otherwise, taking into consideration the purpose for which the land will be used.

* * * * *

CHARLES F. LUCE,
Under Secretary of the Interior.

APRIL 13, 1967.

[F.R. Doc. 67–4327; Filed, Apr. 19, 1967; 8:46 a.m.]

Published in 32 F.R. 6194, April 20, 1967 - Effective upon publication.

Circular Distribution List

GPO 835-044

Repl. by C-2291

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular No. 2227]

PART 2220—GRANTS

Subpart 2226—Desert Land Act

DITCHES

In § 2226.1–5, paragraphs (e) and (f) are amended to read as follows:

§ 2226.1–5 Final proof.

* * * * *

(e) *Showing as to irrigation system.* The final proof must show specifically the source and volume of the water supply and how it was acquired and how it is maintained. The number, length, and carrying capacity of all ditches, canals, conduits, and other means to conduct water to and on each of the legal subdivisions must also be shown. The claimant and the witnesses must each state in full all that has been done in the matter of reclamation and improvements of the land, and must answer fully, of their own personal knowledge, all of the questions contained in the final-proof blanks. They must state plainly whether at any time they saw the land effectually irrigated, and the different dates on which they saw it irrigated should be specifically stated.

(f) *Showing as to lands irrigated and reclaimed.* While it is not required that all of the land shall have been actually irrigated at the time final proof is made, it is necessary that the one-eighth portion which is required to be cultivated shall also have been irrigated in a manner calculated to produce profitable results, considering the character of the land, the climate, and the kind of crops being grown. (Alonzo B. Cole, 38 L.D. 420.) The cultivation and irrigation of the one-eighth portion of the entire area entered may be had in a body on one legal subdivision or may be distributed over several subdivisions. The final proof must clearly show that all of the permanent main and lateral ditches, canals, conduits, and other means to conduct water necessary for the irrigation of all the irrigable land in the entry have been constructed so that water can be actually applied to the land as soon as it is ready for cultivation. If pumping be relied upon as the means of irrigation, the plant installed for that purpose must be of sufficient capacity to render available enough water for all the irrigable land. If there are any high points or any portions of the land which for any reason it is not practicable to irrigate, the nature, extent, and situation of such areas in each legal subdivision must be fully stated. If less than one-eighth of a smallest legal subdivision is practically susceptible of irrigation from claimant's source of water supply and no portion thereof is used as a necessary part of his irrigation scheme, such subdivision must be relinquished. (43 L.D. 269.)

STEWART L. UDALL,
Secretary of the Interior.

MAY 19, 1967.

[F.R. Doc. 67–5853; Filed, May 25, 1967; 8:46 a.m.]

Published in 32 F.R. 7713, May 26, 1967 - Effective upon publication.

Circular Distribution List

GPO 835-906

Repl. by C-2258

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2228]

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

Subpart 3107—Oil and Gas Exploration Operations

Sec.

3107.01 Purpose.
3107.05 Definitions.
3107.1–1 Notice of intent to conduct oil and gas exploration operations.
3107.1–2 Bond.
3107.1–3 Completion of operations.
3107.1–4 Consent to release of bond; termination of liability thereunder.

§ 3107.01 Purpose.

The purpose of the regulations in this Subpart 3107 is to establish procedures to be followed in conducting exploration of the public land for oil and gas. For exploratory operations for other leasable minerals, the lease or permit required by the appropriate regulations must be secured. The regulations in this subpart are not applicable to exploration operations conducted pursuant to oil and gas lease, and also are not applicable to the exploration of public domain lands for minerals subject to location under the U.S. mining laws.

§ 3107.05 Definitions.

For the purpose of the regulations in this subpart:

(a) "Oil and gas exploration" means any activity relating to the search for evidence of oil and gas which requires physical presence upon the land and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, construction of roads and trails, and cross-country transit by vehicle over public domain. It does not include the casual use of public lands for oil and gas exploration. It does not include core drilling for subsurface geologic information or drilling for oil and gas; these activities will only be authorized by the issuance of an oil and gas lease. The regulations in this subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right to "drill" for oil and gas by a lessee upon his leased premises.

(b) "Public lands" means lands owned by the United States and administered by the Bureau of Land Management. It does not include retained mineral interest in lands, title to which has passed from the United States.

(c) "Casual use" means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are "casual use."

§ 3107.1–1 Notice of intent to conduct oil and gas exploration operations.

(a) Any person desiring to conduct oil and gas exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file with the District Manager of the Bureau of Land Management for the district in which the public lands are located a "Notice of Intent to Conduct Oil and Gas Exploration Operations," on a form [1] approved by the Director.

(b) The "Notice of Intent to Conduct Oil and Gas Exploration Operations" will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities.

(2) A statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form.

(c) A brief description of the type of operations which will be undertaken.

(d) A description of the lands to be explored, by township and range.

(e) Approximate date of commencement of operations.

[1] Form filed as part of original document.

Published in 32 F.R. 8968, June 23, 1967 - Effective 30 days after publication.

Circular Distribution List

§ 3107.1–2 Bond.

Simultaneously with the filing of the Notice of Intent to Conduct Oil and Gas Exploration Operations, and before entry is made on the land, the party or parties filing the "Notice of Intent to Conduct Oil and Gas Exploration Operations" must file with the District Manager a surety company bond in the amount of $5,000, conditioned upon the full and faithful compliance, for each oil and gas exploration operation, with all of the terms and conditions of the regulations in this subpart and of that notice, or a statewide bond in the amount of $25,000 covering all oil and gas exploration operations in the same State, or a $50,000 nationwide bond. Holders of nationwide and statewide oil and gas lease bonds shall be permitted to amend their bonds to include exploration activities in lieu of furnishing additional bonds.

§ 3107.1–3 Completion of operations.

Upon completion of the exploratory operations, there shall be filed with the District Manager a "Notice of Completion of Oil and Gas Exploration Operations". Within 90 days after the filing of such "Notice of Completion", the District Manager shall notify the party who had conducted the operations whether all of the terms and conditions set out by the regulations in this subpart and in the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with, or whether any additional measures must be taken to rectify any damage to the land, specifying the nature and extent thereof.

§ 3107.1–4 Consent to release of bond; termination of liability thereunder.

The District Manager will not give his consent to the cancellation of the bond if an individual bond was submitted, or to the termination of liability if a State or nationwide bond was submitted, unless and until all of the terms and conditions of the "Notice of Intent to Conduct Oil and Gas Exploration Operations" have been complied with. Should the District Manager or any other authorized officer of the Bureau of Land Management fail to notify the party within 90 days from the filing of "Notice of Completion" that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, liability under an individual bond or liability for a particular oil and gas exploration operation under a State or nationwide bond shall automatically terminate on the 91st day.

CHARLES F. LUCE,
Acting Secretary of the Interior.

JUNE 19, 1967.

[F.R. Doc. 67-7064; Filed, June 22, 1967; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Repl. by C-2321

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2229]

PART 3130—COAL LEASES, PERMITS, AND LICENSES

Miscellaneous Amendments

1. Section 3131.1 is amended in its entirety to read as follows:

§ 3131.1 Acreage limitations.

(a) Except where the rule of approximation applies, a permit may not exceed **5,120** acres. The rule of approximation applies to applications for prospecting permits only where elimination of the smallest legal subdivision involved would result in a deficiency of area under 5,120 acres greater than the excess over 5,120 acres resulting from the inclusion of such subdivision. A permit shall include contiguous tracts, or tracts in reasonably compact form.

(b) There is no statutory limitation on the acreage that may be included in any one leasing tract. However, the authorized officer after consultation with the mining supervisor of Geological Survey, will determine the amount of acreage to be included in each leasing tract, taking into consideration the area required for plant facilities and such other data as may be pertinent. A lease shall include contiguous tracts, except in cases where noncontiguous tracts can be efficiently worked as a single mine or unit.

(c) Except as hereinafter stated, no person, association or corporation may hold at one time coal leases or permits exceeding 46,080 acres in any one State, whether directly through the ownership of such leases and permits, or interest therein, and applications therefor, or indirectly as a member of an association or as a stockholder of a corporation holding such leases and permits, or interest therein, and applications therefor. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be such party's proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation, unless he is the beneficial owner of more than 10 percent of the stock or other instruments of ownership or control of such association or corporation.

(d) A person, association, or corporation may file with the appropriate land office an application or applications for coal lease or permits for acreage in addition to the 46,080 acres, which application or applications shall be in multiples of 40 acres, not exceeding a total of 5,120 additional acres in any one State, and shall contain a statement showing that the granting of a lease or permit for such additional lands is necessary to carry on business economically and is in the public interest.

(e) Upon the filing of an application for additional lands as specified in paragraph (d) of this section, the coal deposits in the lands covered thereby shall be temporarily set aside and withdrawn from all forms of disposal under the Act.

(f) Notice of all applications filed for additional lands as specified in paragraph (d) of this section shall be posted in the appropriate land office, and the authorized officer shall conduct public hearings thereon. The authorized officer will thereafter determine the amount of additional acreage to be granted under this section taking into consideration the area required for plant facilities and such other data as may be pertinent. Thereafter and to the extent necessary for the applicant to carry on business economically, the authorized officer may issue coal leases or permits to the applicant for additional acreage of not more than 5,120 acres, subject to such terms and conditions as may be prescribed by the Secretary of the Interior. Such terms and conditions may require the payment either of cash bonus per acre or fraction thereof or a rental and royalty rate different from that required by the original leases or permits, or both.

2. Paragraph (b) of § 3131.2 is amended to read as follows:

§ 3131.2 Qualifications of applicants.

* * * * *

(b) Every applicant for coal permit or lease must show that, with the area applied for, his or its interest or interests in such permits, leases and applications therefor, directly or indirectly, do not exceed in the aggregate of 46,080 acres in any one State.

Published in 32 F.R. 10652, July 20, 1967.

Circular Distribution List

3. A new section is added to Subpart 3131 to read as follows:

§ 3131.5 Cooperative conservation provisions.

§ 3131.5–1 General.

Objectives: To conserve the natural resources of any coal field or prospective coal area, or any part or zone thereof, and to permit an orderly, efficient and economic development of such coal fields, the act authorizes the Secretary of the Interior to approve cooperative agreements among lessees or permittees and their representatives if such agreements or contracts are certified by the Secretary to be necessary or advisable in the public interest. It also permits him to enter into a development contract with a single lessee and to consolidate the leases or permits of one or more lessees or permittees.

§ 3131.5–2 Types of contracts.

In order to carry out the objectives of the act as set forth in § 3131.5–1, the Secretary may:

(a) Approve collective contracts of lessees and permittees and their representatives and others, for prospecting, development, or operation of coal fields or prospective coal areas, or any part or zone thereof.

(b) Enter, for the same purposes, into a development contract with a single lessee or permittee embracing his leases or permits.

(c) Consolidate separate Federal permits or leases of one or more lessees or permittees into a lesser number of permits or leases, or into a single permit or lease.

§ 3131.5–3 Special provisions of contracts.

(a) A contract approved hereunder shall not provide for an apportionment of production or royalties among the separate tracts comprising the contract area, but may provide for the commingling of production with appropriate allocation to the tracts from which produced. In connection with any contract approved or executed or with any consolidation accomplished under this subpart, the authorized officer may, with the consent of the party or parties involved, establish, alter, change, or revoke mining, producing, rental, minimum royalty, and royalty requirements of such leases or permits or contracts.

(b) In the case of any contract between lessees or their representatives, or between them and others for collective development or operation of any coal field or coal area, or any part or zone thereof, such arrangement as the working interest owners may enter into for the sharing or division of production among them shall not be deemed to be an apportionment of production or royalties among the separate tracts comprising the contract area.

§ 3131.5–4 Approval of contracts and exemption from acreage limitations.

Coal leases and permits operated under a contract approved or executed by the Secretary pursuant to the provisions of this subpart may be excepted from acreage limitations or maximum holdings or control imposed by the Act, if it be determined that such exception is required to permit economic development of the coal resources and is otherwise consistent with the public interest.

§ 3131.5–5 Application for approval.

A contract submitted for approval under this subpart should be filed with the appropriate land office, together with enough copies to permit retention of five copies after approval. It must be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area or filed must be submitted for approval at the same time, and full disclosure of the project made. Complete details must be furnished in order that the Secretary may have facts upon which to make a definite determination in accordance with the provisions of the act, and to prescribe the conditions on which approval of the contracts is made.

§ 3131.5–6 Common-carrier railroads.

Any company or corporation operating a common-carrier railroad which may be a party to a collective contract or development contract with a Federal lessee under this subpart, to develop its own lands, excluding Federal lands leased by the railroad, in connection with or in cooperation with a Federal lessee or lessees shall not be deemed to be given or hold a lease by virtue of any such arrangement between the working interest owners.

4. Paragraph (c) of § 3132.1–1 is amended to read as follows:

§ 3132.1–1 Leasing units.

* * * * *

(c) Leasing units may include, in whole or in part, unsurveyed land. If the lands are unsurveyed, they must be described in accordance with approved protracted surveys or, in the absence of such protracted surveys, by metes and bounds.

5. Paragraphs (a) and (b) of § 3132.1–2 are amended to read as follows:

§ 3132.1–2 Leasing of additional coal deposits.

(a) Under section 3 of the Act (30 U.S.C. 203), a lessee may obtain a modification of his lease to include coal lands or coal deposits contiguous to those embraced in his lease if the authorized officer determines that it will be to the advantage of the lessee and the United States. The lessee shall file his application for modification in duplicate in the

proper land office, describing the additional lands desired, the needs and reasons for and the advantage to the lessee of such modification. Upon determination by the authorized officer that the modification is justified and that the interest of the United States is protected, the lease will be modified without competitive bidding to include such part of the land or deposits as he shall prescribe. If however, it is determined that the additional lands or deposits can be developed as part of an independent operation or that there is a competitive interest in them, they will be offered as provided in § 3132.4–2.

(b) Under section 4 of the Act (30 U.S.C. 204) upon satisfactory showing by the lessee that all of the workable deposits of coal within a tract covered by the lease will be exhausted, worked out or removed within 3 years thereafter, an additional tract of land or coal deposit may be leased. Application shall be filed in duplicate in the proper land office and shall contain a description of the lands requested, estimated recoverable reserves, future plan of operation for such reserves and for any lands requested and the proposed method of entry into such lands. If the lands or coal deposits or any part thereof are found to constitute an acceptable leasing unit, they will be offered for leasing as provided in § 3132.4–2. If the applicant be the successful bidder and the additional lands can be practicably operated with the applicant's leasehold as a single mine or unit, the additional lands may be included in a modified lease.

* * * * *

6. Subparagraphs (2), (3), and (5) of § 3132.2(a) are amended to read as follows:

§ 3132.2 Application for lease.

(a) * * *

(2) Statement of citizenship: If applicant is an individual, he must submit a statement as to his citizenship; if an association (including a partnership), it must submit a certified copy of the articles of association and a statement by its members as to their citizenship and holdings. If the applicant is a corporation, it must submit statements showing (i) the state in which it is incorporated; (ii) that it is authorized to hold leases and permits for coal deposits, (iii) the names of the officers authorized to act in such matters in behalf of the corporation; (iv) the percentage of the corporate voting stock and of all the stock owned by aliens or those having addresses outside of the United States; and (v) the name, address, citizenship, and acreage holdings of any stockholder owning or controlling 10 percent or more of the corporate stock of any class. If more than 10 percent of the stock is owned or controlled by or on behalf of aliens, or persons who have addresses outside of the United States, the corporation must give their names and addresses, the amount and class of stock held by each, and to the extent known to the corporation or which can be reasonably ascertained by it, the facts as to the citizenship of each. A municipality must submit evidence of: (*a*) The manner in which it is organized; (*b*) that it is authorized to hold a permit or lease; and (*c*) that the action proposed has been duly authorized by its governing body. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

(3) A statement of interests, direct or indirect, in other coal leases, permits, or applications thereof on Federal and non-Federal lands in the state in which the lease is desired, and the estimated reserve of coal that applicant has from any source, identifying the Federal leases by serial numbers, and whether such Federal interests, when added to the acreage covered by the application, exceed the aggregate of 46,080 acres in the state. A railroad company or corporation operating a common-carrier must state that its interests, together with the acreage covered by the application, do not exceed in the aggregate 10,240 acres.

* * * * *

(5) The showing specified in § 3131.2 (d).

* * * * *

7. Section 3132.3–1 is amended to read as follows:

§ 3132.3–1 Compliance bond.

A compliance bond on a form approved by the Director in an amount to be determined by the authorized officer but not less than $1,000 will be required prior to the issuance of a lease. The right is reserved at any time before or after issuance of a lease to require an increase in the amount of the bond whether a corporate, personal, or individual surety bond, in any case where the authorized officer of the Bureau of Land Management deems it proper to do so.

8. Paragraph (b) of § 3132.7 is amended to read as follows:

§ 3132.7 Cancellation of lease.

* * * * *

(b) A lease or permit issued pursuant to § 3131.1(f) may be canceled by the authorized officer, if the cancellation is in the public interest or the coal deposits in the lands covered thereby are no longer necessary for the lessee or permittee to carry on business economically or if the lessee or permittee has divested himself of all or any part of the original 46,080 acres or no longer has facilities for the exploitation of the deposits under lease or permit. However, such lessee or permittee will be given notice of the proposed cancellation and afforded an opportunity of submitting evidence showing why the lease or permit should not be canceled.

9. Paragraph (a) of § 3133.4 is amended to read as follows:

§ 3133.4 Permit bond.

(a) The applicant must furnish a corporate surety bond or a personal bond on a form approved by the Director conditioned upon compliance with all the terms of the prospecting permit. The bond shall be in an amount to be determined by the authorized officer, but not less than $1,000.

* * * * *

10. Paragraph (a) of § 3134.1 is amended to read as follows:

§ 3134.1 Transfers, including subleases.

(a) Permits and leases may be transferred, in whole or in part to any person, association, or corporation qualified to hold such leases and permits. The approval of a transfer of only part of the lands described in a permit or lease will create a new permit or lease which will be given a current serial number but a discovery on lands under one permit will not inure to the benefit of the other. The approval of such a transfer will not extend the life of the permit or the readjustment periods of the lease. Transfers of permits and leases, whether by direct assignments, working agreements, transfer of royalty interests, subleases or otherwise, must be filed for approval within 90 days from final execution and must contain evidence of the qualifications of the assignee or transferee, consisting of the same showing required of a lease or permit applicant by § 3132.2. If a bond is necessary it must be furnished. Transfers of record title interest must be filed in triplicate. A single executed copy of all other instruments of transfer is sufficient. A transfer will take effect the first day of the month following its final approval by the authorized officer of the Bureau of Land Management, or if the transferee requests, the first day of the month of the approval.

STEWART L. UDALL,
Secretary of the Interior.

JULY 12, 1967.

[F.R. Doc. 67-8366; Filed, July 19, 1967; 8:47 a.m.]

GPO 837-207

Repl. by C-2321

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2230]

PART 3160—PHOSPHATE LEASES; PROSPECTING PERMITS AND USE PERMITS

Subpart 3161—General Provisions

Subpart 3162—Competitive Leases

MISCELLANEOUS AMENDMENTS

1. Subparagraph (1) of paragraph (a) of § 3161.1 is amended to read as follows:

§ 3161.1 Area; limitation on holdings; term.

(a) * * *

(1) No person, association, or corporation, may hold at any one time more than 20,480 acres in the United States, whether directly through the ownership of phosphate leases, permits, and applications therefor or interests in them, or indirectly through association membership or stock ownership. In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease or permit shall be such party's proportionate part of the total lease and permit acreage. Likewise the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holding of any association or corporation unless he is the beneficial owner of more than ten per centum of the stock or other instruments of ownership or control of such association or corporation.

* * * * *

2. Subparagraph (1) of paragraph (b) of § 3161.2 is amended to read as follows:

§ 3161.2 Qualifications of applicant.

* * * * *

(b) * * *

(1) If an individual, a statement as to citizenship.

* * * * *

3. Section 3161.3–4 is amended to read as follows:

§ 3161.3–4 Permit bond.

Prior to the issuance of a permit the applicant must furnish a bond in an amount to be determined by the authorized officer, but not less than $1,000.

4. Section 3162.2 is amended to read as follows:

§ 3162.2 Lease bond.

A compliance bond in an amount to be determined by the authorized officer but not less than $1,000 will be required prior to the issuance of a lease. The right is reserved at any time before or after issuance of the lease to require an increase of the amount of the bond, whether a corporate or personal bond, in any case where the Bureau of Land Management deems it proper to do so.

STEWART L. UDALL,
Secretary of the Interior.

JULY 14, 1967.

[F.R. Doc. 67–8367; Filed, July 19, 1967; 8:47 a.m.]

Published in 32 F.R. 10654, July 20, 1967.

Circular Distribution List

GPO 837-208

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2231]

PART 3120—OIL AND GAS

Subpart 3122—Issuance of Leases

Subpart 3123—Noncompetitive Leases

OIL AND GAS LEASES ON KNOWN GEOLIGICAL STRUCTURES OF PRODUCING OIL OR GAS FIELDS

§ 3122.1 [Amended]

1. The second sentence of § 3122.1(a) is amended to read as follows: When land is within the known geologic structure of a producing oil or gas field prior to the actual issuance of a lease, it may be leased only by competitive bidding and in units of not more than 640 acres to the highest responsible qualified bidder at a royalty of not less than 12½ percent.

2. A new subsection (c) is added to § 3123.3 as follows:

§ 3123.3 Rejection of offer.

* * * * *

(c) If, after the filing of an offer for a noncompetitive lease and before the issuance of a lease pursuant to that offer, the land embraced in the offer becomes within a known geological structure of a producing oil or gas field, the offer will be rejected and will afford the offeror no priority.

STEWART L. UDALL,
Secretary of the Interior.

[F.R. Doc. 67-11065; Filed, Sept. 20, 1967; 8:46 a.m.]

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Circular Distribution List

HISTORICAL FILES

Circular No. 2232

Rep by 2232

Regulations pertaining to:

LAND TENURE MANAGEMENT

SPECIAL CONSIDERATIONS

43 CFR 2033

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOVEMBER 1, 1967

Subpart 2033—Veterans

§ 2033.0–3 Authority.

(a) *Act of September 27, 1944.* The act of September 27, 1944 (58 Stat. 747; 43 U.S.C. 279–284), as amended, referred to in this part as the "1944 Act", grants to veterans of World War II and of the Korean Conflict certain benefits in connection with the public lands. These rights are in addition to the benefits conferred on persons in the military service by the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1178; 50 U.S.C., App. 560–572), as amended, and the regulations thereunder in this part, relating to rights initiated or acquired under the public land laws prior to the entrance of the claimant into the military or naval service.

(b) *Other war statutes.* Other statutes have granted benefits under the homestead laws (43 U.S.C. 164, 169, 218) to veterans who served in earlier wars. The veterans benefited, referred to in this part as "veterans of other wars" and the statutes conferring the benefits are as follows: Veterans of certain Indian Wars, act of April 7, 1930 (46 Stat. 144; 43 U.S.C. 243); veterans of the Civil War, Sec. 2305, Revised Statutes (43 U.S.C. 272); veterans of the war with Spain and of the suppression of the Philippine Insurrection, acts of June 16, 1898 (30 Stat. 473; 43 U.S.C. 240) and of March 1, 1901 (31 Stat. 847; 43 U.S.C. 271, 272); and veterans of the Mexican border operations and of World War I, act of February 25, 1919 (40 Stat. 1161; 43 U.S.C. 272a, 278), as amended by the act of April 6, 1922 (42 Stat. 491; 43 U.S.C. 233, 272, 273), and Public Resolution 79 of December 28, 1922 (42 Stat. 1067; 43 U.S.C. 186, 272a).

(c) *Boulder Canyon Project Act.* Under the terms of section 9 of the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1063), as amended by the act of March 6, 1946 (60 Stat. 36, 43 U.S.C. 617h), all persons who served in the Army, Navy, Marine Corps, or Coast Guard during World War II, World War I, the war with Spain, or in the suppression of the insurrection in the Philippines, and who have been honorably separated or discharged therefrom or placed in the regular Army or Naval Reserve, will have a preference right for a period of three months to enter lands reclaimed by irrigation and reclamation under that act, subject to such qualifications as to industry, experience, character, and capital, as are deemed necessary to give reasonable assurance of success by the prospective settler. Such exclusive preference right is also given by the act cited to veteran settlers on lands watered from the Gila Canal in Arizona and on lands watered from the All-American Canal in California.

(d) *Act of October 17, 1940.* (1) The act of October 17, 1940 (54 Stat. 1178), known as the "Soldiers' and Sailors' Civil Relief Act of 1940," extends relief and benefits to persons in the military service, including those set forth in Subpart 2033. Section 604 of the act provides that the act shall remain in force until May 15, 1945, but that should the United States be then engaged in a war, the act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for 6 months thereafter. It also provides that wherever under any section or provision of the act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date therein fixed for the termination of the act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction.

(2) By section 14 of the act of June 24, 1948 (62 Stat. 623), as amended (50 U.S.C. App. Sup. 464) all of the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 were continued in effect until "repealed or otherwise terminated by subsequent act of the Congress."

(3) Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which it engages while the Soldiers' and Sailors' Civil Relief Act of 1940 is in force, will be entitled to the relief and benefits afforded thereby if such service is similar to military service as defined in such act and in § 2033.0–5 and if they are honorably discharged and resume United States citizenship, or die in the service of the allied forces, or as a result of such service (Sec. 512, 54 Stat. 1190).

(e) *Statutes superseded; statute repealed.* (1) Section 605 of the Soldiers' and Sailors' Civil Relief Act of 1940 makes the provisions of section 4 of the joint resolution approved August 27, 1940 (54 Stat. 860), and the provisions of section 13 of the Selective Training and Service Act of 1940, inapplicable to any military service performed after October 17, 1940. Paragraph 3 of section 503 of the act first mentioned repeals the act of July 28, 1917 (40 Stat 248).

(2) (i) Section 4 of Public Resolution No. 96 of August 27, 1940, extended the benefits of certain provisions of the Soldiers' and Sailors' Civil Relief Act of March 8, 1918 (40 Stat. 440–448), including section 501, to all National Guard, Reserve and Retired Personnel, ordered into the military service under authority of its provisions, so long as such personnel are in such service and for 60 days thereafter.

Section 13 of the Selective Training and Service Act of 1940 extended the same benefits to persons who are inducted into the land or naval forces under the authority of its provisions and to all members of any reserve component of such forces then or thereafter on active duty for a period of more than one month.

(ii) The act of July 28, 1917 (40 Stat. 248), extended certain relief to homestead entrymen or settlers who enter the military or naval service of the United States in time of war. The Soldiers' and Sailors' Civil Relief Act of 1940 extends substantially the same relief to those who are entitled to its benefits.

§ 2033.0–5 Definitions.

The following definitions, contained in section 101 of the Soldiers' and Sailors' Civil Relief Act of 1940, are adopted as definitions for the purpose of § 2033.2:

(a) The term "persons in the military service" shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy.

(b) The term "military service" shall signify Federal service on active duty with any branch of service above referred to as well as training or education under the supervision of the United States preliminary to induction into the military service and shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(c) The term "period of military service" and equivalent terms, shall include the time between the following dates: For persons in the active service on October 17, 1940, it shall begin with that date; for persons entering the active service after the date mentioned, it shall begin with the date of entering the active service. It shall terminate with the date of discharge from active service or death while in the service, but in no case later than the date when the Soldiers' and Sailors' Civil Relief Act of 1940 ceases to be in force.

§ 2033.1 Act of September 27, 1944; benefits to veterans.

§ 2033.1–1 Persons entitled to veterans' benefits.

(a) A veteran is entitled to benefits under the 1944 act if he has served in the military or naval forces of the United States including the Coast Guard, on or after September 16, 1940, and prior to the termination of the Korean Conflict, referred to in this part as the "statutory period" of the 1944 act, and has been honorably discharged from such forces. The veteran is considered to have been honorably discharged for the purposes of the 1944 act if separated from the service by means of an honorable discharge, by the acceptance of resignation, or by a discharge under honorable conditions. A release from active duty is acceptable instead of a discharge if the release from active duty to an inactive status was under honorable conditions, whether or not in a reserve component or retirement, and whether or not the veteran thereafter resumes active military duty. In addition, the veteran must have:

(1) Served at least 90 days during the statutory period, or

(2) Been discharged on account of wounds received or disability incurred during the statutory period in line of duty, or

(3) After regular discharge, been furnished hospitalization or awarded compensation by the Government on account of wounds received or disability incurred during the statutory period.

A veteran, under 21 years of age, who is otherwise entitled to benefits under the 1944 act, may not be disqualified from making homestead entry or from any other benefits of the 1944 act merely because of age.

(b) A "veteran of other wars" is entitled to benefits if he was honorably discharged and served:

(1) With the United States Army or Navy or with a unit of the Federalized National Guard mustered into the United States service or with a Red Cross unit assigned to an Army or Navy unit, if the veteran served between April 15, 1861, and August 20, 1866, and remained loyal to the Government; or if he served between April 21, 1898, and July 15, 1903; or between May 9, 1916, and March 3, 1921; or with the Allied armies between July 28, 1914, and March 3, 1921, and thereafter resumed his United States citizenship; and if the veteran served for at least 90 days during any one of those periods, or was wounded or disabled in line of duty while in such service, or was awarded compensation by the United States for wounds or disability resulting from such service; or

(2) With a Federal, State, or Territorial military organization in any Indian War, campaign, or in a zone of active Indian hostilities between January 1, 1817, and December 31, 1898, if the veteran served for at least 30 days.

(c) The following persons may exercise the rights of a veteran under the regulations of this part, subject to compliance with other applicable regulations:

(1) The wife or husband of a veteran entitled to benefits under the 1944 act, if the veteran gives written consent, such benefits being in addition to any to which the spouse may individually be entitled under the 1944 act as a qualified veteran.

(2) The surviving wife or husband, or the surviving minor children if the spouse dies or remarries, of a veteran

entitled to benefits under the 1944 act or of a person who died as the result of wounds received or disability incurred in line of duty while serving with the military or naval forces during the statutory period of the 1944 act.

(3) The heirs or devisees of a veteran entitled to the benefits of the 1944 act with respect to a homestead settlement or entry made by the veteran who died before perfecting title to the claim, without leaving a surviving spouse or minor children.

(4) The unmarried widow of a "veteran of other wars" entitled to benefits under the regulations of this part who died prior to making homestead entry, or the widow of such a veteran who died after making homestead settlement or entry or filing a declaratory statement but prior to perfecting his claim.

(5) The minor orphan children of a "veteran of other wars" entitled to benefits under the regulations of this part if:

(i) The veteran died prior to making homestead entry or died while actually engaged in the war with Spain, the Philippine Insurrection, the Mexican border operation, or World War I after settling on public lands of the United States, and if the widow died or remarried; or

(ii) The veteran made homestead entry or filed a declaratory statement or his widow made homestead entry but died prior to perfecting the claim, leaving a minor child or minor children as his or her only heirs.

(6) The heirs or devisees of any "veteran of other wars" entitled to benefits under the regulations of this part who made homestead settlement or entry, or filed a declaratory statement, but died before perfecting title to the claim, leaving no widow or surviving minor children entitled as his only heirs to benefits under the regulations of this part.

(d) As of the date of issuance of § 2033.1 the Korean Conflict has not yet been declared terminated by Presidential proclamation or by concurrent resolution of Congress, as required by the 1944 act.

§ 2033.1–2 Credit for and evidence of service.

(a) Any person, entitled to benefits under the regulations of this part, may obtain credit only for actual service, with the organizations and for the "statutory periods" specified in the regulations of this part, subject to minimum requirements specified in the regulation in this part except as follows:

(1) Credit is granted for the equivalent of two years' service, regardless of the actual length of service by a veteran entitled to the benefits of the 1944 act, if the veteran was discharged because of wounds received or disability incurred in line of duty during the "statutory period" of the 1944 act; or after regular discharge, was furnished hospitalization or awarded compensation by the Government on account of such wounds or disability; or died as the result of wounds received or disability incurred in line of duty during such period.

(2) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars" who was discharged because of wounds received or disability incurred in the line of duty, or who subsequent to discharge was awarded compensation for such wounds or disability.

(3) Credit is granted for the whole term of enlistment, regardless of actual length of service by any "veteran of other wars", except of the Indian wars, if the veteran died during the term of his enlistment.

(4) Credit is granted for service by any "veteran of other wars" except of the Indian wars, for the full term of the service under his enlistment, although such term did not expire until after the war ceased.

(5) Credit granted for service between May 9, 1916, and March 3, 1921, includes time spent in a course of training under the Vocational Rehabilitation Act of June 27, 1918 (40 Stat. 617), or under treatment in a Government hospital on account of wounds or disabilities incurred in line of duty during that period.

(b) For the purpose of the regulations of this part, credit for service in the military or naval forces of the United States begins upon induction into such service whether by enlistment, draft, appointment, or call into active service from a reserve status. Credit for service by a veteran entitled to the benefits of the 1944 act terminates upon his honorable discharge or release from active duty under honorable conditions to an inactive status, whether or not in a reserve component, or retirement, and whether or not he has thereafter resumed active duty. He is considered to have been honorably discharged for the purposes of the 1944 act if he has been separated from the service by means of an honorable discharge, or by the acceptance of resignation or a discharge under honor-

able conditions. Credit for the service by a member of the Naval Reserve or of the Federalized National Guard who was called into active service during the Mexican border operations or during World War I terminates upon the date of his actual discharge, and not upon the date that he was ordered to inactive duty. Except for veterans of Indian wars who served with State or Territorial troops, qualifying service does not include service with State or Territorial troops, units of the Red Cross, or the National Guard prior to assignment or after the termination of the assignment of such units or troops into the service of the United States.

(c) No credit for military service can be allowed where commutation proof is submitted.

(d) A veteran claiming benefits under this part must submit evidence clearly showing:

(1) A discharge from the armed forces or other unit on the basis of service with which he claims benefits under the regulations in this part;

(2) The period of his service; and

(3) Other facts upon which his claim is based.

Preferred evidence for subparagraphs (1) and (2) of this paragraph is a photostatic copy of both sides of the veteran's certificate of discharge although other duly corroborated evidence will be accepted.

(e) Any other person claiming benefits under this section must submit all the evidence required of a veteran; and in addition, must include information as to whether the veteran is deceased, the date of his or her death, and whether the spouse has remarried, and facts as to homestead entry made by the veteran. A guardian, duly appointed and accredited to the Department must represent any surviving minor children. He must submit a like statement, and in addition give the name, address, and age of each surviving minor child.

§ 2033.1–3 Residence requirements under the homestead and Alaska homesite laws.

(a) Persons claiming benefits under the regulations in this part must comply with the homestead or Alaska homesite laws, as the case may be, for a period of at least one year and for such additional period as, added to the term of qualifying service, equals three years. Except as elsewhere indicated in this section, the following tables list the amount of residence required of such persons, according to the service credit to which they are entitled.

(1) Residence requirements under the homestead laws (43 U.S.C., sec. 161, et seq.):

(i) In the computation of the required periods of homestead residence, there has been excluded the five months' of absence each year which may be taken by giving notice as required in Subpart 2211.

Number of months of service credit	Number of months of residence required during the first 3 years after entry		
	1 year	A second year	A third year
19 or more	7		
18	7	1	
17	7	2	
16	7	3	
15	7	4	
14	7	5	
13	7	6	
7 to 12	7	7	
6	7	7	1
5	7	7	2
4	7	7	3
3	7	7	4
2 [1]	7	7	5
1 [1]	7	7	6

[1] Applicable only as to service in any Indian war, campaign, or in a zone of active Indian hostilities since veterans need a minimum of only 30 days service to obtain statutory benefits for such service.

(2) Residence requirements under the Alaska Homesite Act (48 U.S.C., sec. 461):

(i) These reduced residence requirements are applicable only to persons entitled to the benefits of the 1944 act.

Number of months of service credit	Number of months of residence required after entry		
	1 year of the entry	A second year of the entry	A third year of the entry
17 or more	5		
16	5	1	
15	5	2	
14	5	3	
13	5	4	
5 to 12	5	5	
4	5	5	1
3	5	5	2

(b) The following persons are excused from residence requirements:

(1) The surviving spouse, surviving minor orphan children, or other heirs or devisees, of a homestead entryman, who have succeeded to the homestead entry are excused from further residence on the land after the death of the entryman.

(2) Surviving minor orphan children of a veteran entitled to the benefits of the 1944 act who made an Alaska homesite entry are excused from further residence on the land after death of the entryman.

§ 2033.1–4 Cultivation and other requirements under the homestead and the Alaska homesite laws.

(a) An entryman entitled to benefits under the regulations in this part must comply with the requirements of these regulations and any others relating to his entry under the homestead or Alaska homesite law. If the entryman succeeds to the rights of a deceased entryman, the successor must show that the deceased entryman had complied with the applicable laws and regulations up to the time of his death.

(b) A homestead entryman obtaining benefits under the regulations in this part, may comply with the cultivation and other requirements and become entitled to a patent for his homestead prior to the termination of the three-year period otherwise required of homestead entrymen for such compliance, if he promptly files his final homestead proof. He must in any case cultivate at least one-eighth of the area entered. The following tables indicate the area of cultivation required under the homestead law of such persons, according to the service credit to which they are entitled.

(1) Cultivation requirements under the homestead laws for persons entitled to the benefits of the 1944 act:

Year after date of entry during which proof is filed [1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First [2]	1/8				
Second [3]		1/8			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] This table assumes that final homestead proof is filed promptly after completion of the cultivation requirements listed in the above table. The homestead law requires cultivation until final proof. If the homesteader delays submission of final homestead proof beyond the period of residence required, therefore, he must perform the necessary cultivation during each annual cultivable season elapsing or reached before the submission of proof, except for those years to which his service credit is applied.

[2] Applicable only to persons entitled to credit for 19 months or more of service.

[3] Applicable only to persons entitled to credit for 7 months or more of service.

(2) Cultivation requirements under the homestead laws for persons entitled to the benefits of "veterans of other wars":

Year after date of entry during which proof is filed [1]	Portion of entry required to be cultivated				
	First year	Second year	Third year	Fourth year	Fifth year
First [2]					
Second [3]		1/16			
Third		1/16	1/8		
Fourth		1/16	1/8	1/8	
Fifth		1/16	1/8	1/8	1/8

[1] See footnote 1 in table in subparagraph (1) of this paragraph.

[2] See footnote 2 in table in subparagraph (1) of this paragraph.

[3] See footnote 3 in table in subparagraph (1) of this paragraph.

(c) The following persons are excused from any further compliance with the requirements of laws and regulations relating to the entries t owhich they have succeeded, nor do they have to show that the entryman had complied with applicable laws and regulations prior to his death:

(1) The surviving minor orphan children of a person entitled to the benefits of the 1944 act.

(2) The surviving minor orphan children of anyone else who made homestead entry but who died prior to perfection of title, leaving only a minor child or minor children.

(3) The widow of a veteran, or in case of her death or remarriage, the surviving minor children, if the veteran settled on the public lands but died prior to perfecting his title, while actually engaged in the military or naval service of the United States during the war with Spain, the Philippine Insurrection, the Mexican border operations, or World War I.

(d) A person entitled to benefits under the regulations of this part may receive a reduction in the area to be cultivated under the homestead regulations Subpart 2211 in the same manner and under the same conditions required of other applicants.

§ 2033.1–5 Soldiers' and sailors' declaratory statements.

(a) "Veterans of other wars" may initiate a homestead entry by filing a soldiers' and sailors' declaratory statement. Separate forms approved by the Director are available for: (1) Veterans who served between May 9, 1916 and March 3, 1921. (2) Veterans who served at other

times and who are filing through an agent acting under power of attorney. (3) Veterans who served at other times and who are filing in person. Such statements must be accompanied by a nonrefundable application service charge of $10.

(b) In Alaska the veteran must commence residence on the land within 6 months after the filing of his statement. Elsewhere he must commence residence within 6 months after allowance of his entry.

(c) Filing of a declaratory statement segregates the lands from all forms of appropriation.

(d) Filing of a declaratory statement in Alaska exhausts the person's homestead right, subject to such relief as may be provided by the general homestead laws.

§ 2033.2 Act of October 17, 1940; benefits to persons in military service.

§ 2033.2–1 Claims protected from forfeiture.

No right to any public land owned or controlled by the United States, initiated or acquired under any laws of the United States, including the general mining and mineral leasing laws, by any person prior to entering the military service will during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon, or for failure to do any other act required by or under such laws.

§ 2033.2–2 Rights protected.

No public land claimant in the military service will be denied the right to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering the military service.

§ 2033.2–3 Rights of minors.

Any person under 21 years of age who serves in the military service while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, will be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over 21 possess under such laws. Any requirement as to the establishment of residence within a limited time will be suspended as to entry by such person until 6 months after his discharge from the military service. An application for entry by such person need not be under oath but must be signed by him.

§ 2033.2–4 Notice, proof, required.

(a) *Notice.* (1) Where notice of entrance into military service and of a desire to hold claims or obtain benefits is required by the act of October 17, 1940 (54 Stat. 1187, 50 U.S.C. App. sections 561–572) (except notice of a mining location), it shall be given on a form approved by the Director to the proper land office, as provided in § 1821.2–1(b)(1) of this chapter, within 6 months after entrance into service.

(2) A claimant of a mining location shall, in accordance with § 2033.2–7, give notice of his military service before the close of the assessment year.

(3) Notice shall be by registered mail unless it is filed personally in the proper office by the claimant or by his agent.

(b) *Execution of affidavits.* A person in the military service may execute any affidavit or submit any proof required by law or the regulations of the Bureau of Land Management, in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which he is engaged. Such affidavit will be as binding in law, and with like penalties, as if taken before a manager of a land office.

§ 2033.2–5 Homesteads.

Homestead claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture, as provided in § 2033.2–1:

(a) *Credit for military service.* Any person having a valid homestead settlement claim, or any person who has made homestead application for public lands which is allowed after the date of the filing thereof, or any homestead entryman whose application has been allowed, who after such settlement, application or entry enters the military service, is

entitled, in the administration of the homestead laws, to have his military service construed to be equivalent to residence and cultivation upon the tract settled upon or entered, for the period of such service. Moreover, if he is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability will be deducted from the required length of residence, without reference to the time of actual service No patent will issue, however, until he has resided upon, improved and cultivated his homestead for a period of at least 1 year. He will be entitled during each year's required residence to a 5 months' leave of absence, in like manner as any other homesteader.

(b) *Credit for physical disabilities due to military service.* Any person entitled to credit for military service who is honorably discharged and because of physical incapacity due to such service is unable to return to the land, may make proof, regardless of whether or not 1 year's residence, improvements, and cultivation have been had, without further residence, improvements, or cultivation, at such time and place as the manager of the proper land office may authorize, and receive a patent to the land entered.

(c) *Farm labor by homesteader during war.* (1) During the pendency of any war in which the United States may be engaged while the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, any homestead entryman will be entitled to a leave of absence from his entry for the purpose of performing farm labor. The act does not authorize such leave of absence, if the United States does not engage in war. The time actually spent in farm labor will be counted as constructive residence, if within 15 days after leaving his entry to engage in such labor the entryman files in the proper land office a notice of absence from the land, and if at the expiration of the calendar year the entryman files in the proper office a written statement corroborated by two witnesses giving the date or dates when he left the entry, the date or dates of his return, and the place where and the person for whom he was engaged in farm labor during the period or periods of his absence.

(2) The provisions in subparagraph (1) of this paragraph will not excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law, and they will apply only to persons whose applications were allowed or filed prior to October 17, 1940.

(d) *Widow, heirs, and minor children of homesteader.* If any person having a valid settlement claim or a pending or allowed homestead application dies while in the military service or as a result of such service his widow, if unmarried, or in the case of her marriage or death, his minor children or his or their legal representatives, may submit final proof without showing further residence, cultivation or improvements. If the deceased claimant had a valid homestead settlement claim for which application had not been filed, a homestead application based thereon must be presented. If the claim is on unsurveyed land, a homestead application cannot be presented until the land has been surveyed. In such case, request for survey should be made as promptly as possible, accompanied by a duly corroborated statement showing when the settlement claim was made, the periods during which deceased claimant resided upon and cultivated the land, and the facts as to his military service. The death of the claimant while in the military service or as a result of such service will be construed to be equivalent to a performance of all requirements as to residence and cultivation upon the homestead claim. Upon the submission of satisfactory proof, patent will be issued to the person or persons entitled thereto.

(e) *Contest of homestead.* (1) On and after October 17, 1940, and as long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a homestead entry made or applied for prior to the entrance of the entryman into the military service, will be allowed, or adverse proceedings against such entry ordered, on the ground of abandonment, unless there is an allegation therein that the entryman's alleged absence from the land was not due to his military service. No allegation of abandonment will be sustained against a homestead settler or entryman in connection with such contest, unless it is proved at the hearing, if one be had, that the claimant's alleged absence from the land was not due to such military service.

(2) The manager will reject an application to contest a homestead entry on the charge of abandonment, if he finds that it was filed during the period of the entryman's military service, or during

any period of hospitalization of the claimant because of wounds received or disability incurred in the line of duty. If any charge other than or in addition to abandonment is made, or if the claimant enters the military service or is hospitalized after the contest application is filed, the proceedings will be suspended for the period of such service or hospitalization.

§ 2033.2–6 Desert-land entries.

Desert-land claimants are entitled to the following relief and benefits, in addition to the protection of their claims from forfeiture as provided in § 2033.2–1:

(a) *Credit for military service.* No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into the military service, will be subject to contest or cancellation for failure to make or expand the sum of $1 per acre per year in improvements on the land or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service or during a period of 6 months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land will be exclusive of his period of service and the 6-months' period and any such period of hospitalization. In order to obtain the benefits mentioned, notice of military service must be given in accordance with § 2033.2–4(a).

(b) *Credit for physical incapacities due to military service.* Any person who is entitled to credit for military service who is honorably discharged and because of physical incapacities due to his military service and who is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation or payment and receive patent for the land entered or claimed.

(c) *Contest of desert-land entry.* (1) On and after October 17, 1940, and as long as the Soldiers' and Sailors' Civil Relief Act of 1940 remains in force, no application to contest a desert-land entry made or applied for prior to the entrance of the claimant into the military service will be allowed, or adverse proceedings against such entry ordered, for failure of the claimant to make or expend the sum of $1 per acre per year in improvements upon the claim, or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in the military service, or during a period of 6 months thereafter, or during any period of hospitalization because of wounds or disability incurred in the line of duty, unless there is an allegation therein that the alleged default did not occur during such military service or hospitalization. No allegation of such default will be sustained against a desert-land claimant in connection with such contest unless it is proved at the hearing, if one be had, that the alleged default did not occur during such military service or hospitalization, as indicated.

(2) Any contest proceedings involving a desert-land entry, brought either before or after the claimant enters the military service, will be suspended for the period of such service and for 6 months thereafter, and during any period of hospitalization of the claimant because of wounds or disability incurred in the line of duty.

§ 2033.2–7 Mining claims.

The relief and benefits extended because of military service and the requirement as to notice of such service, made by section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940, in connection with mining claims, are as follows:

(a) *Claims protected from forfeiture.* The provisions of section 2324 of the Revised Statutes, which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor, not less than $100 worth of labor shall be performed or improvements made during each year, will not apply during the period of the claimant's military service, or until 6 months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in the line of duty, to claims or interests in claims which are owned by such person and which have been regularly located and recorded. No mining claim nor any interest in a claim which is owned by such a person and which has been regularly located and recorded will be subject to forfeiture for nonperformance of the annual assessment labor during the period of such military service, or until

6 months after the termination of such service, or of such hospitalization.

(b) *Notice of military service.* (1) The holder of a mining location who desires to obtain the relief and protection mentioned in paragraph (a) of this section, must, before the expiration of the assessment year during which he enters the military service, file or cause to be filed in the county recording office in which the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold the mining claim under section 505 of the Soldiers' and Sailors' Civil Relief Act of 1940. The notice may be given on a form approved by the Director.

(2) If application for patent to the mining claim has been made, notice to the Bureau of Land Management of the applicant's entrance into military service is desirable, but not mandatory.

§ 2033.2–8 Installment payments for land, under homestead and other entries.

Where under the law under which a particular entry was made, installment payments for the land become due during the period of the military service, such period will not be considered a part of the aggregate period of time originally allowed for the completion of such payments and the time for the making of the payments will be appropriately extended. Where the term of the military service is 1 year or less, the time of payment of each installment maturing during or after such term will be extended for 1 year; where the term of service is between 1 and 2 years, the extension will be for 2 years; and similar extensions will be granted for longer terms of service. The payment so extended will be due upon the same day of the year as is now required and no interest will be charged during the period of the suspension.

§ 2033.2–9 Leases, permits, licenses, and claims.

(a) No mineral or grazing lease, or any mineral, timber, or other permit or license, or any application for such lease, permit or license, or any right or claim which has been applied for or acquired under the public land laws by any person prior to entering the military service, will, during the period of such service, be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or to make any improvements thereon, or his failure to do any other act required by or under such laws.

(b) Where during the period of the military service, the claimant or his agent continues to operate or to make use of the land in accordance with the terms of the lease, permit, or other right, the rentals, royalties, and other obligations will become due and payable as provided by such instrument. If in a particular case the ability of the claimant to make such payment has been affected materially by reason of his military service, a showing of the facts may be made and such relief as may be deemed appropriate will be granted.

(c) The regulations in this section for the suspension of leases, permits, licenses, etc. are based on the general protection accorded all claims contained in section 501 of the Soldiers' and Sailors' Civil Relief Act of 1940, the specific authority for the suspension of leases and permits issued under the Federal mineral leasing laws, contained in section 506 of the act, and the general authority conferred on the Secretary of the Interior, to issue rules and regulations, contained in section 507 of the act.

(d) Any person having a mineral lease or permit, a grazing lease, or any lease, permit, license or other right involving the public lands, under the administration of the Bureau of Land Management, including claims the suspension of which is not specifically authorized by any section of the act, who enters the military service may, at his election, suspend all operations under such instrument for a period of time equivalent to the period of his military service and 6 months thereafter. The term of the lease or permit will not run during the period of such suspension, no rentals or royalties for the period of the suspension will be charged, and no use of the land during such period by the claimant or his agent under such instrument may be made.

(e) In order to obtain the benefits of section 506 of the act, a permittee or lessee of public domain under the Federal mineral leasing laws shall file a notice of his entrance into military service and of his desire to avail himself of the benefits of that section, in accordance with § 2033.2–4(a).

(f) The suspension of a lease, permit, license, etc., will not be construed to supersede the terms of any contract for the operation thereof.

This Circular replaces Circulars 1833, 1981, 2116, 2184, 2196 and those portions of Circulars 2054 and 2085 relating to Part 181.

GPO 839-428

Circular No. 2233

Regulations pertaining to

FOREST PRODUCT DISPOSALS

ALASKA TIMBER SALES

43 CFR 5409

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOVEMBER 1, 1967

Subpart 5409—Alaska Timber Sales

§ 5409.1 Small sales of timber for use in Alaska.

§ 5409.1–1 Lands from which timber may be sold.

Timber may be sold from vacant public lands in Alaska, and from withdrawn public lands in Alaska when permitted by the order of withdrawal.

CROSS REFERENCES: For timber sales in Alaska not authorized by this part, see § 5400.0–3(a)(2). For timber sales for export, see § 5409.2.

§ 5409.1–2 Appraised prices.

No sales may be made below the appraised prices established by the State Director.

§ 5409.1–3 Application; who may purchase.

(a) An application to purchase timber should be submitted on a form approved by the Director which may be obtained from any office of the Bureau in Alaska. The application should be filed in the district in which the timber desired is situated, or in any forestry office of the Bureau in Alaska. It must be accompanied by a deposit in accordance with § 5409.1–4.

(b) The application may be made by an individual, a partnership, an unincorporated association, or a corporation organized under the laws of the United States, or of a State or Territory thereof, and authorized to transact business in Alaska.

§ 5409.1–4 Cash deposit.

(a) If the estimated sale value of the timber applied for equals or exceeds $25, the application must be accompanied by a deposit of $25, or 15 percent of the estimated sale value, whichever is the greater. If the estimated sale value is less than $25, a deposit representing the full estimated sale value must be made.

(b) The deposit may be in the form of cash, a money order, cashier's check, certified check, or personal check made payable to the Bureau of Land Management. At the discretion of the authorized officer, larger deposits—up to the full sale value—may be required before the permit is issued.

(c) In the discretion of the authorized officer, a performance bond may be required of not less than 25 percent of the sale value. Upon satisfactory completion of the permit the bond, if in cash or securities will be returned to the permittee, and if in the form of a surety bond will be cancelled.

(d) After a permit is issued, the minimum deposit is not returnable, even if no timber has been cut. Where the value of the timber to be cut exceeds the amount of the deposit, the deposit will be credited as partial payment against the total sale value.

(e) Additional payments shall be made by the permittee at the request of the authorized officer, or when the value of the timber cut equals the amount of the deposit plus previous payments. The computed volume, based on an inventory of stumps made by the authorized officer shall be prima facie evidence in establishing the volume of forest products cut by the permittee.

§ 5409.1–5 Permits.

(a) *Issuance of permit.* (1) A permit to cut and remove timber will be issued on a form approved by the Director. The authorized officer may, in his discretion, reject the application, or he may amend or otherwise limit the area, species, products, or volume applied for or add such additional provisions and conditions which, in his opinion, are required by sound forest practices, provided the applicant consents. If the applicant refuses consent his deposit will be refunded. The appropriate Bureau sign must be posted in a conspicuous place on the land, before any timber is cut.

(2) Permits will be valid for one year unless an extension is granted. Extensions will be granted only on a showing that the permittee, because of matters beyond his control, was unable to cut and remove the timber within the life of the permit and that the interests of the Government will not be prejudiced by the extension.

(3) Where, after the issuance of a permit and before the timber covered thereby is cut and removed the timber is destroyed or damaged, in whole or in part, without fault on the part of the permittee or his agent, the authorized officer, in his discretion, may grant the permittee relief by the amendment of the permit to include an equivalent value of other timber.

(b) *Amendment of permit.* The original permit may be amended at any time during the permit year with the consent of the permittee. For example, the permit volume might be increased to meet additional requirements of the permittee.

(c) *Subsequent claim subject to timber application.* When a valid homestead, mining or other claim is initiated on public land subsequent to the issuance of a permit to cut timber and the posting on the land of the appropriate sign, such subsequent claimant's rights are subject to the right of the timber applicant to cut and remove the timber covered by the permit.

(d) *Revocation of permit.* A permit may be revoked for failure of the permittee to comply with the provisions of

these regulations, or with the terms of the permit. If cutting is being done in violation of the terms of the permit, any authorized officer of the Bureau may order the cutting stopped, revoke the permit, and demand such additional payment for the timber as may be due the Government.

(e) *Removal of personal property upon termination of permit.* (1) Upon termination of a permit the permittee shall have the right at any time within 60 days thereafter to remove his equipment, improvements, or other personal property from the Government land, provided all charges due the United States under the permit have been paid. The authorized officer, in his discretion, may grant requests for a reasonable extension. Any improvements, equipment, or personal property remaining on the Government land after the time for removal has expired shall become the property of the United States.

(2) Improvements needed by the permittee for the severance, extraction, or removal of other Government-owned materials under existing contracts or permits may be left on the Government land for such period and under such terms as may be prescribed by the authorized officer.

§ 5409.1–6 Appeals.

A party aggrieved by any official action involving his application or permit may appeal to the Director, Bureau of Land Management, and from the Director to the Secretary of the Interior, pursuant to Appeals and Contests contained in Parts 1840 and 1850 of this chapter.

§ 5409.2 Sale of timber for exportation from Alaska.

§ 5409.2–1 Small quantity sales.

Sales of timber to be cut for export may be made pursuant to the procedure and under the conditions set forth in § 5409.1, where quantities are such as will be disposed of from year to year, and the purchases are made by those who do not contemplate large-scale production and an expenditure of large sums of money for developing enterprises for the exportation of such timber.

§ 5409.2–2 Large quantity sales.

Sales of timber suitable for manufacturing purposes are hereby authorized in quantities, if found available, sufficient to supply a mill or proposed mill for a period of as much as 20 years, when it is satisfactorily shown that the purchaser in good faith intends to develop an enterprise for the cutting of this class of timber for export from Alaska and the sale does not endanger the supply of such timber for local use. The amount of timber that any one purchaser will be permitted to purchase under this provision and the period of the contract will be governed by the capacity of the mill and the estimated quantity that it will be capable of producing during the period covered by the contract of sale. When a 20 years' supply is sold the period within which the same must be cut (20 years) will begin to run from the time that the contract of sale is executed, if the manufacturing plant has been built, or from the time that the mill has been constructed and ready to begin operations if it is to be built, but in no case will more than 2 years be allowed for construction: *Provided, however,* That if operations have not been commenced within three years from the date of the execution of the contract the Secretary of the Interior, upon a satisfactory showing, may in his discretion excuse the delay. Commencement of operations in this sense will be construed as a bona fide commencement of actual cutting of timber in quantity sufficient to show that it is the purpose of the purchaser to fulfill the conditions of the contract and that it was not entered into merely for speculative purposes.

§ 5409.2–3 Applications to purchase; deposit.

Applications to purchase timber for export from Alaska pursuant to the act of April 12, 1926, must be filed in duplicate in the land office for the district wherein the lands to be cut over are situated and should show: (a) Name, postoffice address, residence, and business location of applicant; (b) amount or approximate amount of board feet of timber that the applicant desires to purchase; (c) a description by legal subdivision or subdivisions, if surveyed, or by metes and bounds with reference to some permanent natural landmark, if unsurveyed, and the area or approximate area of the land from which the timber is to be cut, and if the lands are within the area (Alaskan Timber Reserves) withdrawn pursuant to the act of March 12, 1914 (38 Stat. 305; 48 U.S.C. 301, 302, 303–308), in aid of the construction of the Alaskan Government-owned railroads it should be so stated, and evidence of consent previously obtained from The

Alaska Railroad should be filed with the application; (d) whether or not the applicant is prepared to commence cutting immediately, and if not, approximately how long before timber cutting operations will be commenced; (e) the estimated annual capacity of the mill or proposed mill, and the amount of money invested or to be invested in the establishment of the enterprise, accompanied by evidence as to the financial standing of the applicant and a statement showing the general plan of operation and the purpose for which the timber is to be used. A minimum sum of $200 must be deposited with each application, as an evidence of good faith and for the purpose of helping to defray the cost of appraisal. The sum of such deposit may be increased when, in the opinion of the Secretary of the Interior, the interests of the Government require that a larger amount be deposited. If the sale is consummated, the amount of the deposit will be credited on the purchase price without deduction for the cost of appraisal. All remittances must be in cash or by certified check or postal money order.

§ 5409.2–4 Publication and posting; marking of land.

Immediately upon the filing of an application to purchase timber under § 5409.2–2 a notice shall be published at the expense of the applicant in a designated newspaper published in the vicinity of the land from which the timber is to be cut and most likely to give notice to the general public, once a week for a period of five consecutive weeks, in accordance with § 1824.4 of this chapter. The description of the land in the notice must be identical with the description in the application. A copy of the notice will be posted in a conspicuous place in the land office during the period of publication. Upon the execution of a contract, the purchaser shall, if the lands from which the timber is to be cut are unsurveyed, cause the boundaries to be blazed or otherwise marked as provided in the contract. This requirement has been adopted in order that others who may subsequently desire to purchase timber or to settle upon or enter the land may have notice that the timber has been applied for.

§ 5409.2–5 Action on application; field report and appraisal.

The manager will make appropriate notations upon the records of his office. The appraisal rates will be based upon a fair stumpage rate taking into consideration the quality of the timber and its accessibility to market. In no event will any timber suitable for manufacturing purposes be appraised at less than $1 per thousand feet, board measure. The Government reserves the right to reappraise the remaining standing timber at the expiration of 5 years from the date of commencement of the timber cutting period as set forth in §5409.2–2 and at intervals of 5 years thereafter, but in no instance shall the appraisal be at more than double the rate of the original appraisal.

§ 5409.2–6 Execution of contract; bond required.

If such sale appears warranted, the Bureau of Land Management will offer the timber for sale by competitive bidding in such newspapers and publications and for such period of time as may be designated. The successful bidder will be notified that he will be allowed 30 days from receipt of such notice within which to enter into a contract with the Government through the Bureau of Land Management as its agent to purchase the timber offered for sale pursuant to the rules and regulations of the Department of the Interior pertaining thereto, and shall execute and file therewith a bond in a sum not less than 50 percent of the stumpage value of the estimated amount of timber to be cut during each year of the contract. The said bond must have as surety a bonding company shown on an approved list issued by the Treasury Department, and it shall be conditioned on the payment for the timber in accordance with the terms of the contract and to the faithful performance of the contract in other respects and to observance of the rules and regulations pursuant to which the sale is made. Contracts and bonds hereunder will be executed on forms approved by the Director.

§ 5409.2–7 Renewals of contract.

At the expiration of a contract a new contract may, in the discretion of the authorized officer, be entered into for a period of not to exceed 20 years, where there is sufficient timber available to warrant it. Prior good faith of the purchaser and substantial compliance with the conditions of the expired contract will be given consideration with reference to awarding a new contract. A new appraisal shall be made at that time for the purpose of fixing the stumpage price.

§ 5409.2–8 Lands from which timber may not be sold.

The rules and regulations in § 5409.2, governing the sale of timber for export, are not applicable to timber on national forests, Indian or Eskimo claims, or lands otherwise appropriated, reserved, or withdrawn, for any purpose, except where the terms of the reservation or withdrawal order permit.

This Circular replaces Circular 1901.

GPO 839 - 429

Regulations pertaining to

FOREST PRODUCT DISPOSALS

43 CFR 5461

Circular No. 2234

Regulations pertaining to

FOREST PRODUCT DISPOSALS

NON-SALE DISPOSALS

43 CFR 5461

NOVEMBER 1, 1967

Subpart 5461—Free Use

Sec.
5461.1 Act of 1878.
5461.1–1 Free use of timber on mineral and nonmineral public lands.
5461.1–2 Use by settlers and homesteaders of timber on their pending claims.
5461.1–3 Use of timber on lands covered by grazing leases, by lessees, and others.
5461.1–4 Free use of timber upon oil and gas leases.
5461.2 Act of 1898 (Alaska).
5461.2–1 Free use privilege; cutting by agent.
5461.2–2 Free use of timber for Government purposes.
5461.2–3 Permits.
5461.2–4 Timber on withdrawn lands.
5461.2–5 Trespass; penalty for unauthorized cutting of timber.
5461.2–6 Appeals.
5461.2–7 Governing regulations for free use by oil and gas claimants.
5461.3 Act of 1947.
5461.3–1 Free use of timber under other statutes.
5461.3–2 Permits.
5461.3–3 Conservation practices.
5461.3–4 Removal by agent.
5461.3–5 Removal of improvements.
5461.3–6 Permits to governmental units.
5461.3–7 Permits to non-profit organizations.
5461.3–8 Permits to mining claimants.

§ 5461.1 Act of 1878.

§ 5461.1–1 Free use of timber on mineral and nonmineral public lands.

(a) *Lands on which timber may be cut.* Free-use permits to cut timber may be issued covering public lands as follows: (1) Mineral lands, unoccupied and unreserved and not subject to entry under existing laws of the United States, except for mineral entry, in the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming. (Act of June 3, 1878, 20 Stat. 88; 16 U.S.C. 604–606); (2) Nonmineral, unoccupied, and unreserved public lands in the States mentioned and also in the States of California, Oregon, and Washington.

(b) *Kind of timber which may be cut.* The proper protection of the timber and undergrowth necessarily varies with the nature of the topography, soil, and forest. No timber not matured may be cut, and each tree taken must be utilized for some beneficial domestic purpose. Persons taking timber for specific purposes will be required to take only such matured trees as will work up to such purpose without unreasonable waste. Stumps will be cut so as to cause the least possible waste and all trees will be utilized to as low a diameter in the tops as possible. All brush, tops, logs, and other forest debris made in felling and removing timber under this section shall be disposed of as best adapted to the protection of the remaining growth and in such manner as shall be prescribed by the authorized officer, and failure on the part of the applicant, or an agent cutting for an applicant, to comply with this requirement will render him liable for all expenses incurred by the authorized officer in putting this regulation into effect.

(c) *Area of land to be cut over.* The permits shall limit the area of cutting to embrace only so much land as is necessary to produce the quantity of timber applied for.

(d) *Use which may be made of timber.* Timber may be cut under approved permit when actually needed for firewood, fencing, building, or other agricultural, mining, manufacturing, and domestic purposes.

(e) *Exportation of timber.* Timber may not be exported from the State in which it is cut except: (1) Timber from a specified area in Wyoming may be exported into Idaho (act of July 1, 1898, 30 Stat. 618; 16 U.S.C. 607, 611); (2) Timber from a specified area in Montana may be exported into Wyoming (act of March 3, 1901, 31 Stat. 1439; 16 U.S.C. 607, 613); (3) Under the act of March 3, 1919 (40 Stat. 1321; 16 U.S.C. 608), citizens of Malheur County, Oregon, may cut timber in Idaho and remove such timber to Malheur County, Oregon; (4) Under the act of March 3, 1919 (40 Stat. 1322; 16 U.S.C. 609), citizens of Modoc County, California, may cut timber in Nevada and remove such timber to Modoc County, California; (5) Timber from a specified area in Arizona may be exported into Utah (act of February 27, 1922, 42 Stat. 398; 16 U.S.C. 610); (6) Citizens of Bear Lake County, Idaho, may cut timber from public lands in Lincoln County, Wyoming, and remove such timber to Bear Lake County, Idaho, but no live standing timber may be taken without compensation (act of August 21, 1935, 49 Stat. 665; 16 U.S.C. 611a).

(f) *Application and permit*—(1) *Information to be furnished by applicant.* (i) Applications should be filed in duplicate and should set forth the names and post-office addresses of the applicants, and any agent or agents who may be employed to procure the timber. Where a corporation is the applicant, the State in which it was incorporated should also be shown.

(ii) Blank forms for making application may be procured from the State Supervisor for the State in which the timber to be removed is located.

(iii) Applications should show the amount of timber required by each applicant; the use to be made thereof; a description of the land from which the timber is to be cut, by subdivision, section, township, and range, if surveyed, or by natural objects sufficient to identify the same if unsurveyed; and the date it is desired to begin cutting.

(2) *Duration of permit.* All rights and privileges under a permit shall terminate at the expiration of the period of 1 year from the date of approval of the permit.

(3) *Liability of applicant.* Where permits are secured by fraud, or where timber is not taken or used in accordance with the terms of the law or §§ 5400.0–3(c)(1) and 5461.1–1(a) to 5461.1–1(g) the Government may enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands. For criminal liability, see 18 U.S.C. 1852.

(g) *Agents*—(1) *Cutting of timber by agents.* Where one or more persons desire timber, and are not in a position to procure the same for themselves, an agent or agents may be appointed for that purpose. Such agent shall not be paid more than a fair recompense for the time, labor, and money expended in procuring the timber and manufacturing the same into lumber, and no charge shall be made for the timber itself. The said compensation must be set forth in a written contract to be entered into by the parties, and a copy thereof must be filed with the application.

(2) *Cutting of timber by agent who is a sawmill operator.* If the amount of timber applied for exceeds $50 in stumpage value, for any continuous period of 12 months, and the timber is to be procured by an agent who is a sawmill operator, a bond equal to three times the amount of the stumpage value of the timber applied for will be required, conditioned upon the faithfull performance of the requirements.

§ 5461.1–2 Use by settlers and homesteaders of timber on their pending claims.

This section is issued under the authority of R.S. 2478; 43 U.S.C. 1201.

(a) *Timber cutting on unperfected claims.* Homestead claimants who have made bona fide settlements upon public land, surveyed or unsurveyed, and who are living upon, cultivating, and improving the same in accordance with law and the rules and regulations of the Department of the Interior, with the intention of acquiring title thereto, are permitted to cut and remove, or cause to be cut and removed, from the portion thereof being cleared for cultivation, so much timber as is actually necessary for that purpose, or for buildings, fences, and other improvements on the land entered. (See 18 U.S.C. 1852.)

(b) *Clearing for cultivation.* In clearing for cultivation, should there be a surplus of timber over what is needed for the purposes above specified, the claimant may sell or dispose of such surplus; but it is not allowable to denude the land of its timber for the purpose of sale or speculation before the title has been conveyed to him by patent.

(c) *Abandonment of claim.* The abandonment of a claim after the timber has been removed is presumptive evidence that the claim was made for the primary purpose of obtaining the timber.

(d) *Exchange of timber for lumber.* A bona fide claimant is also permitted to exchange timber for lumber for improvements upon his claim, provided he exchanges timber for lumber of equal value, and only so much as is actually necessary for the required improvements, exclusive of the cost of cutting, sawing and hauling such timber or lumber to and from the mill. In other words, he has a right to cut as many trees as may be necessary to make or complete his improvements, whether 30, 40, or more, but any cutting in excess of the number of trees required for the improvements would be unlawful.

§ 5461.1–3 Use of timber on lands covered by grazing leases, by lessees, and others.

(a) Before taking timber under a lease issued under section 15 of the Taylor Grazing Act, as amended by the act of

June 26, 1936 (49 Stat. 1978; 43 U.S.C. 315m), the lessee should file application for and procure a permit in accordance with the regulations issued under the acts of June 3, 1878 (20 Stat. 88; 16 U.S.C. 604–606), and March 3, 1891 (26 Stat. 1093; 16 U.S.C. 607), §§ 5400.0–3 (c)(1) and 5461.1–1(a) to 5461.1–1(g).

(b) Where application is made by a person other than the lessee to take timber from lands embraced in a grazing lease issued under section 15 of the said act, investigation should be made to ascertain the facts in the case and whether or not the cutting of the timber applied for would adversely affect the lands for grazing purposes. If no objection appears, the permit may issue but should contain a provision that the timber cutting thereunder must be done in such manner as will not interfere with the rights of the lessee.

(c) All applications for timber should be filed with the State Director for the State in which the timber to be cut is located and should comply with the regulations contained in § 5461.1–1.

§ 5461.1–4 Free use of timber upon oil and gas leases.

(a) *Application*—(1) *Where to apply.* Any oil and gas lessee, or assignee, desiring timber to be used for fuel in drilling operations on a lease not within a national forest, shall file application therefor, on the prescribed form with the officer who issued the lease.

(2) *Notice of rejection of application; right of appeal.* The applicant shall be notified by registered mail in all cases where the permit applied for is not granted and he shall be allowed 30 days from service of notice within which to appeal from such decision to the Director of the Bureau of Land Management.

(3) *Notice by applicant to settler or entryman.* Where the land involved in the oil and gas lease is occupied by a settler or is embraced in an unperfected homestead entry, the applicant must serve notice by registered mail, on the settler, or entryman, showing the amount and kind of timber he has applied for.

(i) Evidence of service of such notice must be furnished.

(ii) The settler or entryman shall be allowed 30 days from service of notice within which to show cause why the permit should not be granted.

(iii) Permits in such cases will be issued only where there is an abundance of timber on the land, and the removal thereof will not materially affect the use of the land by the agricultural claimant.

(4) *Notice of action on application.* The applicant shall be notified by registered mail in all cases where the permit applied for is not granted and the settler or homestead entryman shall be notified in a like manner before the issuance of the permit in all cases where protests are filed against the issuance of such permit.

(b) *Land subject to permit.* A permit granted under this section shall not embrace any land not included in the oil and gas lease, issued or assigned to the applicant. No permit will be issued where title to the surface has passed from the United States.

(c) *Termination of right to cut timber.* All rights and privileges under a permit issued under these instructions, shall terminate upon the expiration or cancellation of the oil and gas lease, or upon the discovery of oil in sufficient quantity for use as fuel in drilling operations.

(d) *Cutting and use of timber.* Timber cut under a permit issued under § 5461.4 may be used for fuel in drilling operations conducted on the land embraced in the oil and gas lease, and all brush, tops, lops, and other debris made in felling and removing the timber shall be disposed of as best adapted to the protection of the remaining growth, and in such manner as shall be prescribed by the authorized officer and failure on the part of the permittee to comply with this requirement will render him liable for all expenses incurred in putting this regulation into effect.

(e) *Liability of permittee.* Where permits are secured by fraud or timber is not used in accordance with this section, the Government will enforce the same civil and criminal liabilities as in other cases of timber trespass upon public lands.

(f) *Unauthorized cutting.* The cutting of timber for sale and speculation, or for use by others than the permittee, is strictly prohibited.

§ 5461.2 Act of 1898 (Alaska).

§ 5461.2–1 Free use privilege; cutting by agent.

(a) Except as provided in § 5461.2–4 the only timber which may be cut under §§ 5461.2–1 to 5461.2–6 for free use in

Alaska is timber on vacant public lands in the State not reserved for national forest or other purposes. The timber so cut may not be sold or bartered. The free use privilege does not extend to associations or corporations, except churches, hospitals, and charitable institutions. Any applicant entitled to the free use of timber may procure it by agent, if desired, but no part of the timber may be used in payment for services in obtaining it or in manufacturing it into lumber. Timber may not be cut by an applicant under this section after the land has been included in a valid homestead settlement or entry or other claim, except that any applicant for the free use of timber who has been granted a permit to cut as hereinafter provided, will have the right to cut the timber while the permit remains in force as against a subsequent applicant who may wish to obtain the same timber by purchase, except as provided in § 5409.1–5(b).

(b) Free use permits will not be issued where the applicant owns or controls lands having an adequate supply of timber to meet his needs.

§ 5461.2–2 Free use of timber for Government purposes.

Persons contracting with Government officials to furnish firewood or timber for United States Army posts or for other authorized Government purposes may procure it from the vacant and unreserved public lands in Alaska free of charge, provided the contracts do not include any charge for the value of the firewood or timber. Where it is desired to procure timber for such use, an application for permit in duplicate on a form approved by the Director must be filed, as in other cases, and a copy of the contract must be attached to the application.

§ 5461.2–3 Permits.

(a) *Application for permit.* Before timber is cut for free use, an application for permit in duplicate on a form approved by the Director must be filed in an office or with an employee of the Bureau of Land Management in Alaska.

(b) *Issuance and cancellation of permit; removal of timber; bond.* (1) A permit may be issued and shall incorporate the provisions, if any, governing the selection, removal, and use of the materials. One copy of the official form shall be returned to the applicant showing the approval or rejection of such application.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions, or the regulations in §§ 5461.2–1 to 5461.2–6, or if the permit has been issued erroneously.

(3) No timber shall be removed until the permit is issued. If deemed necessary by the signing officer, a bond, satisfactory to him, may be required as a guarantee of faithful performance of the provisions of the permit and the regulations in §§ 5461.2–1 to 5461.2–6.

(c) *Cutting rules and restrictions.* All free-use timber shall be cut and removed in accordance with approved forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed, and other values of the land and resources. In the free-use disposal of timber, the cutting and removal shall be accomplished in such manner as to leave the stand in condition for continuous production. Moreover, no green timber shall be cut within 300 feet of either side of the center line of a highway or public road, or bordering streams or the shores of lakes designated for recreational use unless specifically authorized by the authorized officer, to prevent or control fungus infection or insect attacks, or for other reasons found sufficient to justify such cutting.

(d) *Amount of timber which may be cut.* During each calendar year each applicant entitled to the benefits of section 11 of the act of May 14, 1898, may take a total of 100,000 feet board measure or 200 cords in saw logs, piling, cordwood, or other timber. This amount may be taken in whole in any one of such classes of timber or in part of one kind and in part of another kind or other kinds. Where a cord is the unit of measure, it shall be estimated in relation with saw timber in the ratio of 500 feet board measure to the cord. Permits to take timber in excess of the amount stated may be granted to churches, hospitals, and charitable institutions upon a showing of special necessity therefor, and with the approval of the authorized officer.

(e) *Notice of completion of timber cutting operations.* Upon completion of

the cutting and the removal of the timber, the permittee must notify the State Director, or other forest officer, stating when the work was completed, the land from which the timber was taken, the amount and kind of timber which was cut and removed, and the use to which the timber was put.

(f) *Termination of permit; extensions.* Permits shall be granted for periods not to exceed one year and shall terminate on the expiration dates shown therein unless extended by the signing officer.

§ 5461.2–4 Timber on withdrawn lands.

Sections 5461.2–1 to 5461.2–6 are inapplicable to timber on withdrawn areas unless the order of withdrawal so permits.

§ 5461.2–5 Trespass; penalty for unauthorized cutting of timber.

The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5461.2–1 to 5461.2–6 will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under Title 18, U.S. Code, or under State law.

§ 5461.2–6 Appeals.

A party aggrieved by any action involving his application may appeal to the Director of the Bureau of Land Management and the Secretary of the Interior, pursuant to Appeals and Contests contained in Parts 1840 and 1850 of this chapter.

§ 5461.2–7 Governing regulations for free use by oil and gas claimants.

The free use of timber upon oil and gas leases by lessees, authorized by the Secretary of the Interior under authority of section 32 of the act of February 25, 1920 (41 Stat. 450; 30 U.S.C. 189), is governed by § 5461.1–4.

§ 5461.3 Act of 1947.

§ 5461.3–1 Free use of timber under other statutes.

Free use will be allowed under the following circumstances:

(a) In certain States by settlers on public lands, citizens and bona fide residents of the State, and corporations doing business in the State (§ 5461.1), and

(b) In Alaska by actual settlers, residents, individual miners, prospectors for minerals, churches, hospitals and charitable institutions (§ 5461.2).

(c) Free-use of timber by Governmental units, nonprofit organizations, and certain mining claimants may be authorized under the act and these regulations only when such applicants cannot qualify under the provisions of §§ 5461.1 to 5461.1–4 and § 5461.2.

§ 5461.3–2 Permits.

(a) *Application for permit.* An application for permit in duplicate, must be made on a form approved by the Director and filed in any office or with any employee of the Bureau of Land Management authorized to issue a permit. A free-use permit may be applied for without formal application for the removal of not more than three Christmas trees upon oral or written request.

(b) *Issuance and cancellation of free-use permits; bond.* (1) A free-use permit, on a form approved by the Director, shall incorporate the provisions, if any, governing the selection, removal, and use of timber. Free-use permits shall not be issued when the applicant owns or controls an adequate supply of the material to meet his needs. Timber applied for must be for the applicant's own use and may not be bartered or sold. No timber may be cut or removed until the permit is issued.

(2) The authorized officer may cancel a permit if the permittee fails to observe its terms and conditions or the regulations, or if the permit has been issued erroneously.

(3) A bond satisfactory to the authorized officer may be required as a guarantee of faithful performance of the provisions of the permit and applicable regulations.

(4) A free-use permit issued under this part may not be assigned.

(c) *Duration, extension, and termination of permit.* (1) Permits shall be granted for periods not to exceed 6 months and shall terminate on the expiration dates shown therein unless extended by the authorized officer. An extension not to exceed 3 months may be granted by the authorized officer. The permittee must notify the officer-in-charge upon completion of removal.

(2) Permits issued for the benefit of a mining claimant under authority of the act shall terminate upon transfer of the ownership of the claim by any means. Reapplication must be made by the new claimants.

§ 5461.3–3 Conservation practices.

All free-use timber disposed of under the act shall be severed, or removed in accordance with sound forestry and conservation practices so as to preserve to the maximum extent feasible all scenic, recreational, watershed and other values of the land and resources. In the free-use disposal of timber, cutting and removal shall be accomplished in such a manner as to leave the stand in condition for continuous production.

§ 5461.3–4 Removal by agent.

A free-use permittee may procure the timber by agent. Such agent shall not, however, be paid more than fair compensation for the time, labor and money expended in procuring timber and processing it, and no charge shall be made by such agent for the timber itself. No part of the timber may be used in payment for services in obtaining it or processing it.

§ 5461.3–5 Removal of improvements.

Upon expiration of the permit period the permittee will be given 90 days to remove equipment, personal property and any improvements he has placed on the land, except roads, culverts and bridges are to be left in place, in good condition and will become the property of the United States upon expiration of the 90-day removal period.

§ 5461.3–6 Permits to governmental units.

A free-use permit may be issued to a Federal or State agency, unit, or subdivision, including a municipality, only if the applicant makes a satisfactory showing to the authorized officer that such timber will be used for a public project. The right to remove timber under the permit is not revoked or terminated by (a) any subsequent claim or entry of the lands, (b) by any mining claim located prior to the issuance of the permit if such location was subsequent to July 23, 1955, nor (c) by any other mining claim as to which the Government's right to manage the surface resources has been established in accordance with Group 3400 of this chapter, or other proceedings.

§ 5461.3–7 Permits to non-profit organizations.

A free-use permit issued to a nonprofit association or corporation may not provide for the disposition of more than $100 worth of timber to the permittee during any one calendar year. Such permittee is granted a right to remove timber as against a subsequent applicant who may wish to obtain the same timber by purchase. The timber may not be removed by the permittee after the land has been included in a valid claim by reason of settlement, entry, or similar rights obtained under the public land laws.

§ 5461.3–8 Permits to mining claimants.

(a) Free-use timber shall be granted under § 5400.0–3(d) to the record owner of a valid mining claim if such claim was located subsequent to July 23, 1955, or if the Government's right to manage the surface resources has been established in accordance with Group 3400 of this chapter, and he requires more timber than is available to him for prospecting, mining, or processing operations on his claim or claims after disposition of timber from his claim by the United States. The claimant shall be entitled to the free use of timber for such requirements from the nearest timber administered by the Bureau which is substantially equal in kind and quantity to the timber estimated by the authorized officer at the time of application to have been disposed of by the Bureau from the claim. Upon issuance of a patent to the mining claims, the free-use privilege will automatically terminate.

(b) The application required to be filed for free-use timber under this section must contain a statement that the timber applied for will be used for bona fide prospecting, mining, or prospecting operations on the claim or group of claims designated in the application. The applicant must also include a statement that he is the record owner of a valid mining claim or claims from which the timber was originally removed by the Government.

This Circular replaces Circular 1841.

GPO 839-430

HISTORICAL FILES

Circular No. 2235

Regulations pertaining to

DISPOSITIONS

S P E C I A L U S E S

43 CFR 2235

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOVEMBER 1, 1967

Subpart 2235—Leases

§ 2235.1 Airport.

§ 2235.1–1 Airport and aviation fields—Act of May 24, 1928.

(a) *Authority.* The act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended by the act of August 16, 1941 (55 Stat. 621), authorizes the Secretary of the Interior in his discretion and under such regulations as he may prescribe, to lease for use as a public airport, any contiguous, unreserved and unappropriated public lands, not to exceed 2,560 acres in area. It also authorizes him to grant permission for the establishment of beacon lights and other air navigation facilities, except terminal airports, upon unreserved and unappropriated public lands and to withdraw such lands for such purposes.

(b) *Lands which may be leased.* Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the act of May 24, 1928.

(c) *Prior valid rights.* All leases will be subject to valid existing rights initiated prior to the date the application for lease is filed.

(d) *Applications.* (1) Applications under the Act may be made by: Any citizen of the United States; any group or association of citizens of the United States; any corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; any State or any political subdivision or instrumentality thereof, including counties and municipalities.

(2) No specific form of application is required.

(3) Each application must clearly describe the land applied for, must be signed by the applicant or by a duly authorized agent or officer.

(4) Each application must be accompanied by a non-refundable service fee of $10. However, no service fee will be required from a State or political subdivision or instrumentality thereof.

(e) *Report by Administrator, Federal Aviation Agency; execution of lease.* Upon receipt of the application one copy will be referred to the Administrator, Federal Aviation Agency, for consideration as to what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that department. After the Administrator, Federal Aviation Agency, has reported, a lease on a form approved by the Director will be prepared and sent to the applicant for execution.

(f) *Report by lessee.* The lessee shall, within 6 months from the date of the lease, equip the airport as required by the Administrator, Federal Aviation Agency, and file a report thereof in the land office.

(g) *Inspection by Federal Aviation Agency; report.* At any time during the term of the lease the Administrator, Federal Aviation Agency, may have an inspection made of the airport, and if it does not comply with the ratings set by the Federal Aviation Agency that fact, with a statement as to wherein it fails, will be referred to the Bureau of Land Management for appropriate action.

(h) *Cancellation of lease.* The authorized officer may, in his discretion, cancel a lease issued under the act of May 24, 1928, for any of the following reasons: If the lessee fails to use the leased premises or any part thereof, or uses it or any part thereof for a purpose foreign to the proper use, or shall fail to pay the annual rental or any part thereof, or shall fail to maintain the premises according to the ratings set by the Federal Aviation Agency, or shall fail to comply with the regulations in this part or the terms of the lease.

(i) *Period of lease; renewal.* Leases under the act of May 24, 1928, shall be for a period not to exceed 20 years and may be renewed for like period.

(j) *Annual rental.* Every lessee under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211–214), as amended August 16, 1941 (55 Stat. 621), shall pay to the lessor an annual rental of not less than $10 for an area not exceeding 640 acres, and not less than $5 for each additional

640 acres or fraction thereof. The rental terms of each lease shall be subject to reconsideration and revision at 3-year intervals. The lessee shall be required to submit a report to the Bureau of Land Management, showing the facts as to the gross receipts within 90 days after each anniversary date of the lease. In the event the average annual gross receipts reported during any such interval from operations on the leased land, from all sources, exceed $5,000, the rentals for the succeeding interval or intervals may be increased to such reasonable amount as may be fixed by the authorized officer, but not exceeding 1 percent of such average. Due consideration will be given in fixing the rentals to all pertinent facts and circumstances, including other holdings of the lessee, if any, in connection with which the receipts are obtained. The first annual rental payment shall be made when the application is filed in the land office. All subsequent payments shall be paid in advance on or before the anniversary date of the lease.

(k) *Use of airport by Government departments and agencies; control for military purposes.* The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and with the approval of the Bureau of Land Management, any departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airports.

(l) *Regulations governing use of the airport.* The lessee will submit to the Administrator, Federal Aviation Agency, for his approval, regulations to govern the use of the airport.

(m) *Beacon lights.* Government department and agencies operating aircraft may be granted permission to establish beacon lights and other navigation facilities, except terminal airports, on tracts of unreserved and unappropriated public lands of the United States of appropriate size, on application therefor, under the rules and regulations prescribed in § 2235.1–1. However, no rental will be charged. Lands for beacon lights and other navigation facilities may be withdrawn in accordance with the provisions of Part 2310 and § 2321.6 of this chapter.

(n) *Segregation of lands.* The filing in the proper land office of an application for a lease of lands under the act of May 24, 1928 (45 Stat. 728; 49 U.S.C. 211), as amended, shall segregate the lands described in the application from all appropriation.

§ 2235.1–2 Use by public agencies—Federal Airport Act of May 13, 1946.

NOTE: The regulations of the Federal Aviation Agency under this act are found in 14 CFR, Part 153.

(a) *Authority.* (1) Section 16 of the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1115) provides that whenever the Administrator of the Federal Aviation Agency determines that the use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project under the act, or for the operation of any public airport, he shall file with the head of the Department or agency having control of such lands a request that such property interest therein as he may deem necessary be conveyed to the public agency sponsoring the project in question or owning or controlling the airport.

(2) Upon receipt of the request from the Administrator of the Federal Aviation Agency, the head of the Department or agency having control of the lands in question is directed to determine whether the requested conveyance is inconsistent with the needs of the Department or agency and to notify the Administrator of his determination within a period of four months after receipt of the Administrator's request. Upon the determination of the head of the Department or agency that it is not so inconsistent, he is authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested.

(b) *Definitions.* As used in the regulations in this section unless the context requires otherwise, the following terms shall have the meaning indicated:

(1) "The act" means the Federal Airport Act of May 13, 1946 (60 Stat. 179; 49 U.S.C. 1101).

(2) "Secretary" means the Secretary of the Interior or his duly authorized representative.

(3) "Director" means the Director of the Bureau of Land Management or his duly authorized representative.

(4) "Administrator" means the Administrator of the Federal Aviation Agency or his duly authorized representative.

(5) "Applicant" means any public agency as defined in 14 CFR 153.3, which, either individually or jointly with one or more other such public agencies, submits to the Administrator, an application requesting that public lands or interests therein, be transferred to such applicant under the Federal Airport Act.

(6) "Property interest" means the title to or any other interest in land or any easement through or other interest in air space.

(7) "Instrument of transfer" includes a patent, deed, lease or other instrument transferring a property interest.

(c) *Request by Administrator for transfer of property interest.* Each request by the Administrator in behalf of the applicant for the transfer of a property interest in public lands or other federally owned lands under the jurisdiction of the Department of the Interior should be addressed to the Bureau of Land Management, should be in duplicate, and should contain the following:

(1) A copy of the application filed by the requesting public agency with the Administrator.

(2) A description of the land, if surveyed, by legal subdivisions, specifying section, township, and range. Unsurveyed land should be described by metes and bounds with a tie to a corner of the public-land surveys if within two miles; otherwise a tie should be made to some prominent topographic feature and the approximate latitude and longtitude should be given when practicable.

(d) *Action on the request.* (1) The Secretary will determine whether the requested transfer is inconsistent with the needs of the Department or any agency thereof, and if it is not, the covenants, terms and conditions, if any, under which such transfer should be made. Any such conveyance will be made subject to valid existing rights of record, and to those disclosed as a result of posting, publication, or otherwise.

(2) Ordinarily where the lands involved are situated within a national park or monument or within an Indian reservation the transfer will not be authorized.

(e) *Publication and posting.* Before a transfer of fee title to public lands is made, the Bureau of Land Management will require the applicant to publish, at its own expense in a newspaper of general circulation in the county in which the land is situated, a notice stating that a request has been made by the Administrator on behalf of the applicant (giving its name and address) to acquire title to public lands (describing them) under the act, for the purpose of carrying out a project under the act, or for the operation of a public airport, as the case may be, and that the purpose of the notice is to give persons claiming an interest in the land or having bona fide objections to the proposed transfer an opportunity to file within 30 days after the date of the first publication, a protest, together with evidence that the protest has been served on the applicant. If the notice is published in a daily paper, the notice should be published for four consecutive weeks in the Wednesday issue, if a weekly, in four consecutive issues, and if a semiweekly or triweekly, in any of the issues on the same day each week for 4 consecutive weeks. The notice will also be posted during the entire period of publication in the proper land office (see § 1821.2–1 of this chapter). No transfer will be made until proof of publication and posting of the notice has been filed.

(f) *Special provisions in the instrument of transfer.* Each instrument of transfer made hereunder of fee title or a lesser estate in the lands shall contain: The covenants, terms and conditions requested by the Administrator, as well as those required for the protection of the Department of the Interior or any agency thereof.

§ 2235.2 Fur farm.

§ 2235.2–1 Authority.

The act of July 3, 1926 (44 Stat. 821, 48 U.S.C. secs. 360, 361), authorizes the Secretary of the Interior to lease public lands on the mainland of or islands in Alaska, with the exception of the Pribilof

Islands, for fur farming, for periods not exceeding ten years.

§ 2235.2–2 Policy.

(a) The authority to lease the public lands in Alaska for fur-farming purposes was granted in order to promote the development of the production of furs in Alaska.

(b) No lease for the purpose of raising beavers will be granted on any area already occupied by a beaver colony nor will any such lease be granted on streams or lakes where the activities of beavers may interfere with the run or spawning of salmon.

(c) In order to offer more people an opportunity to lease lands, and to avoid tying up large areas of land unnecessarily, fur-farming leases on public lands will not be granted for areas greater than are justified by the needs and experience of the applicant.

§ 2235.2–3 Area subject to lease.

(a) *Acreage limitation and exceptions.* (1) On the mainland such leases may be for an area not exceeding 640 acres. A lease may cover an entire island, provided the area thereof does not exceed 30 square miles, and provided the need for such entire island is clearly established. Islands so close together that animals can cross from one to the other, and whose combined area does not exceed 30 square miles, will be treated as one island. Islands having an area of more than 30 square miles will be treated as mainland.

(2) Where a lease is granted for an area in excess of 640 acres on an island, the manager may, after notice to the lessee, reduce the area to an amount not less than 640 acres, if he determines that the lessee cannot reasonably use all of the area for which the lease was granted.

(b) *Lands subject to lease.* (1) Vacant, unreserved, and unappropriated public lands are subject to lease.

(2) Except for lands under the jurisdiction of the Fish and Wildlife Service and the National Park Service, public lands withdrawn or reserved for any purpose are subject to lease, if the department or agency having jurisdiction thereof consents to the issuance of the lease.

§ 2235.2–4 Procedures; application, form of lease.

(a) *Qualifications of applicants.* Any person who is a citizen of the United States, or any group or association composed of such persons, or any corporation organized under the laws of the United States, or of any State or Territory thereof, authorized to conduct business in Alaska may file an application.

(b) *Contents of application.* An application for lease should be filed in duplicate in the proper land office. No specific form of application is required, but the application should contain or be accompanied by the following:

(1) Applicant's full name, post office address, the general nature of his present business, and the principal place of business.

(2) (i) A statement of the age and of the citizenship status, whether native-born or naturalized, of the applicant, if an individual, or of each partner or member of a partnership or association. A copartnership or an association applicant shall file a copy of whatever written articles of association its members have executed.

(ii) A corporation shall file a certified copy of its articles of incorporation, evidence that it is authorized to transact business in Alaska, and a copy of the corporate minutes or resolutions authorizing the filing of the application and the execution of the lease.

(3) Description of the land for which the lease is desired, by legal subdivision, section, township, and range, if surveyed, and by metes and bounds, with the approximate area, if unsurveyed. The metes and bounds description should be connected by course and distance with some corner of the public-land surveys, if practicable, or with reference to rivers, creeks, mountains, towns, islands, or other prominent topographical points or natural objects or monuments.

(4) A statement as to the applicant's experience in and knowledge of fur farming.

(5) A statement as to the kind of fur-bearing animals to be raised, and, if foxes, the color type; the number of fur-bearing animals the applicant proposes to have on the leased land within one year from the date of the lease, and whether it is proposed to purchase or trap the stock; and that before commencing operations of any lease which

may be issued, the applicant will procure from the appropriate State game agency whatever licenses are required under Alaska law.

(6) A detailed statement of the reasons for the need for any area in excess of 640 acres but not exceeding 30 square miles, when the land applied for is comprised of an island, or islands.

(7) A statement of the nature and results of the investigation made by applicant as to whether the land and climate are suited to raising the kind of animals proposed to be stocked.

(8) A statement as to whether the land is occupied, claimed, or used by natives of Alaska or others; and, if so, the nature of the use and occupancy and the improvements thereon, if any.

(9) If beavers are to be raised, a statement as to whether a beaver colony exists on the land, and whether salmon streams or lakes are on or adjacent to the land proposed to be leased.

(10) A statement that the applicant is acting solely on his own account and not under any agreement or understanding with another.

(11) The serial numbers of all other applications filed or leases obtained under this act by applicant, or applicant's spouse or business associate, or in which applicant has a direct or indirect interest.

(12) The showing as to hot or medicinal springs required by § 2321.1–2(c) of this chapter.

(13) All applications must be accompanied by an application service fee of $10 which will not be returnable.

(c) *Form of lease; rental and royalty; report of annual operations.* (1) Leases will be issued on a form approved by the Director.

(2) Prior to the issuance of a lease and annually thereafter, the lessee shall pay an advance rental of $5 per annum if the lease embraces 10 acres or less, a rental of $25 per annum if the leased area is more than 10 acres but not more than 640 acres, and a rental of $50 per annum if the leased area exceeds 640 acres.

(3) Within 60 days after the end of each lease year the lessee shall file with the land office a report on a form approved by the Director, in duplicate, showing his operations under the lease and his gross receipts thereunder from the sale of live animals and pelts for the preceding lease year. The lessee shall pay, at the time of filing the report, a royalty of 1 percent of such gross receipts deducting therefrom the amount of the advance rental payment made for such preceding lease year.

§ 2235.2–5 Assignments and subleases.

A proposed assignment on a lease, in whole or in part, or a sublease, must be filed in duplicate with the land office within 90 days from the date of its execution; must contain all of the terms and conditions agreed upon by the parties thereto; and must be supported by a statement that the assignee or sublessee agrees to be bound by the provisions of the lease. The assignee or sublessee must submit with the assignment or sublease the information or statements required by § 2235.2–4(b) (1), (2), (4), (5), (10), and (11). No assignment or sublease will be recognized unless and until approved by the manager.

§ 2235.2–6 Renewal of leases.

Upon an application filed in the proper land office within 90 days preceding the expiration date of the lease, if it is determined that a renewal lease should be granted, the lessee will be offered such lease by the manager, upon such terms and conditions and for such duration as may be fixed, not exceeding 10 years. The filing of an application for renewal does not confer on the lessee any preference right to a renewal. The timely filing of an application will, however, authorize the exclusive fur-farming use of the lands by the lessee in accordance with the terms of the prior lease pending final action on the renewal application.

§ 2235.2–7 Commencement of operations; stocking lands.

The lessee shall, within one year from the date of issuance of the lease, commence operations by taking possession of the leased area, and by placing thereon within that period such improvements as may be needed for such operations and as will show good faith, and shall thereafter develop the fur-farming enterprise on the leased area with reasonable diligence. The lessee shall stock the leased area with the minimum of fur-bearing animals required by the lease within the periods specified in the lease.

§ 2235.2–8 Rights reserved; protection of improvements and roads.

Nothing in this part or any lease issued under this part shall interfere with or prevent:

(a) The prospecting, locating, development, entering, leasing, or patenting of mineral resources in the leased area under laws applicable thereto.

(b) The use and disposal of timber or other resources on or in the leased area under applicable laws.

(c) The use and occupation of parts of leased areas for the taking, preparing, manufacturing, or storing of fish or fish products, or the utilization of the lands for purposes of trade or business, to the extent and in the manner provided by law, and as authorized by the State Director.

(d) The acquisition or granting of rights-of-way or easements under applicable laws and regulations.

(e) Hunting and fishing under applicable Federal and State hunting and fishing laws and regulations, but the authorized officer may prohibit or restrict, or he may authorize the lessee to prohibit or restrict hunting or fishing on such parts of the leased area and for such periods as he may determine to be necessary in order to prevent any substantial interference with the purposes for which the lease is issued.

§ 2235.2–9 Termination of lease; cancellation.

(a) *Action by manager.* (1) The manager may terminate a lease at the request of the lessee if the lessee shall make satisfactory showing that such termination will not adversely affect the public interest and that he has paid all charges due the Government thereunder.

(2) A lease may be canceled if the lessee shall fail to comply with any of the provisions of this part or of the lease, or shall devote the lease area primarily to any purpose other than the rearing of fur-bearing animals as authorized. No lease will be canceled until the lessee has been formally notified of such default and such default shall continue for 60 days after service of such notice.

(b) *Removal of improvements and personal property.* (1) Improvements or personal property may not be removed from the lands, except fur-bearing animals disposed of in the regular course of business, unless all moneys due the United States under the lease have been paid. The lessee shall be allowed 90 days from the date of expiration or termination of the lease within which to remove his personal property and such improvements as are not disposed of in the manner set forth in subparagraph (2) of this paragraph, which he has a right to remove; if not removed or otherwise disposed of within the said period, such improvements or personal property shall become the property of the United States.

(2) Upon the expiration of the lease or the earlier termination thereof, the manager may, in his discretion and upon a written petition filed by the lessee within 30 days from the date of such expiration or termination, require the subsequent lease applicant, prior to the execution of a new lease, to agree to compensate the lessee for any improvements of a permanent nature that he may have placed upon the leased area for fur-farming purposes during the period of the lease. If the interested parties are unable to reach an agreement as to the amount of compensation, the amount shall be fixed by the manager. All such agreements to be effective, must be approved by the manager. The failure of the subsequent lessee to pay the former lessee in accordance with such agreement will be just cause for cancellation of the lease.

This Circular replaces Circulars 1865, 1972, 2178, 2186 and that portion of 2001 relating to Parts 62 and 251. That portion of Circular 2220 relating to Subpart 2235 is also replaced by this Circular.

GPO 839 - 431

Circular No. 2236

Regulations pertaining to:

GRAZING ADMINISTRATION (ALASKA)

LEASES AND PERMITS

43 CFR 4130

U. S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NOVEMBER 1, 1967

Subpart 4131—Grazing Leases

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Subpart 4131—Grazing Leases

§ 4131.0–2 Objectives.

The beneficial utilization of the public lands in Alaska for the purpose of livestock grazing shall be conducted in such manner as may be considered necessary and consistent with the purposes of the act but shall be subordinated to the development of their mineral resources, to their use for agriculture, to the protection, development and utilization of their

forests, and to the protection, development and utilization of such other resources as may be of greater benefit to the public.

§ 4131.0–3 Authority.

The act of March 4, 1927 (44 Stat. 1452; 48 U.S.C. 471, 471a–471o) authorizes the Secretary of the Interior to establish grazing districts upon any public lands in Alaska, surveyed or unsurveyed, outside of the Aleutian Islands Reservation, outside of national forests and other reservations administered by the Secretary of Agriculture and outside of national parks and monuments, and to lease such lands for the grazing of livestock thereon. Section 7 of the act provides that all leases shall be made for a term of 20 years, except where the Secretary of the Interior determines that the land may be required for other than grazing purposes within the period of 10 years, or where the applicant desires a shorter term, and in such cases leases may be made for a shorter period.

§ 4131.0–5 Definitions.

As used in this subpart:

(a) "Secretary" means Secretary of the Interior;

(b) "Director" means Director, Bureau of Land Management;

(c) "Authorized officer" or "manager" means the designated official of the Bureau of Land Management, in whose district the lands involved are situated, who has been delegated the authority to issue grazing leases;

(d) "The act" means the act of March 4, 1927 (44 Stat. 1452, 48 U.S.C. secs. 471, 471a–471o);

(e) "Person" means individual, partnership, corporation or association;

(f) "Native" means any member of the aboriginal races inhabiting Alaska, of whole or not less than half blood;

(g) "District" means any grazing district established under the act.

(h) "Animal unit month" means the forage consumed or grazing privileges represented by the grazing of one cow or its equivalent for one month. For the purpose of this definition, one cow shall be considered the equivalent of one horse, or five sheep or five goats.

§ 4131.1 Conditions.

§ 4131.1–1 Grazing districts.

(a) *Establishment.* Pursuant to the act, grazing districts are hereby established, the boundaries of which shall be co-extensive with the boundaries of the public land districts in Alaska.

(b) *Leases on acreage basis.* Grazing leases will be granted only for such areas as may be deemed adequate and usable according to the needs of the lessee. Leases will provide for grazing on a definite area, and on an acreage basis, except where peculiar local conditions or the difficulties of administration make more practicable a lease based on the number of livestock to be grazed.

§ 4131.1–2 Lands subject to lease.

Vacant, unreserved, and unappropriated public lands are subject to lease. Where these lands are embraced within the natural grazing grounds or routes of migration of animals such as caribou or moose, or have other important values for wildlife, the lands may be leased, in the discretion of the manager, subject to such special terms and conditions as may be determined. Except as to those reservations described in § 4131.0–3 public lands within the boundaries of a grazing district which have been withdrawn for any purpose may be leased with the prior consent of the Department or agency having administrative jurisdiction thereof and subject to such additional terms and conditions as such Department or agency may impose.

§ 4131.1–3 Qualifications of applicants.

An applicant for a grazing lease is qualified if the applicant:

(a) Is a citizen of the United States, or

(b) Has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen, or a valid petition for naturalization, or

(c) Is a group, association, or corporation organized under the laws of the United States or of any State or Territory thereof, authorized to conduct business in Alaska, and the controlling interest in which is vested in persons who would be qualified under either paragraph (a) or (b) of this section.

§ 4131.1–4 No right acquired by applicant prior to lease.

The filing of an application will not segregate the land applied for from application by other persons for a grazing lease, or from other disposition under the public land laws. As the issuance of a lease is discretionary, the filing of an application for a lease will not in any way

create any right in the applicant to a lease, or to the use of the lands applied for pending the issuance of a lease. Any such unauthorized use constitutes a trespass.[3]

§ 4131.2 Procedures.

§ 4131.2–1 Applicants.

(a) *Classes of applicants and preference.* Applicants for grazing leases shall be given preference in the following order:

(1) Natives.

(2) Bona fide settlers.

(3) Other qualified applicants.

(b) *Assertion of preference rights.* Any person claiming a preference right to a lease under paragraph (a) of this section must furnish with the application required under § 4131.2–2(a) a statement setting forth the facts on which such claim is made.

§ 4131.2–2 Application for lease.

(a) *Form used.* An application for grazing lease must be executed in duplicate on a form approved by the Director, and filed with the manager.

(b) *Schedule of operations.* The application must be accompanied by a schedule of the applicant's proposed annual program to develop and increase the number of livestock which will be grazed on the land, and showing the applicant's need for all the land applied for, to provide forage for the maximum number of livestock which the applicant intends to graze thereon.

(c) *Financial responsibility.* The applicant, upon request by the manager, must also furnish evidence of his financial responsibility consisting of a showing that he has the financial means or has made arrangements with an established financial institution to provide the capital necessary to commence and maintain his proposed schedule of operations.

§ 4131.2–3 Maximum number of stock.

The lease will indicate the maximum number of stock which may be grazed on the leased area, based on the condition of the range and its accessibility for summer and winter feeding. The manager may adjust the maximum number from time to time as the condition of the range may warrant.

§ 4131.2–4 Annual rental.

(a) *Amount.* Unless otherwise provided, each lessee shall pay to the Bureau of Land Management such rental per acre, per head, or per animal unit month, as may be determined to be a fair charge for grazing of livestock on the leased land. The rental under any grazing lease may be adjusted every 3 years. The date for making the annual payment will be specified in the lease. If the rental is to be paid according to the number of animals grazed, no charge will be made for the natural increase of grazing animals until the beginning of the following lease year.

(b) *Adjustment or waiver.* The manager, if he determines such action to be in the public interest by reason of (1) depletion or destruction of the range by any cause beyond the control of the lessee, or (2) calamity or disease causing wholesale destruction of or injury to livestock, may grant an extension of time for making payment, or reduce or waive the grazing fee under a lease so affected. An application for the desired relief should be filed with the manager and should state all pertinent details and itemize the losses sustained.

(c) *Payment.* The first rental payment required and the return of the proposed lease duly executed by the prospective lessee shall be made within 30 days of receipt of the lease form by the prospective lessee; if the rental is not paid or the lease is not returned within the prescribed time, the offer shall be null and void and of no effect, and all rights of the prospective lessee thereunder or under the application upon which it is based shall be considered as terminated. Subsequent rental payments for succeeding lease periods are payable in advance. In the event such payment is not received in the proper office by the last day of the current lease period or within the time prescribed in the billing notice whichever is the later, the case shall be considered canceled and all rights terminated thereunder as of the end of such current lease period; except the lease shall not terminate if the lessee submits payment to the proper

[3] It is unlawful for any person to graze any class of livestock on the public lands in grazing districts in Alaska, except under authority of a lease or permit granted under the act. Any person who wilfully grazes livestock in such areas without such authority shall, upon conviction, be punished by a fine of not more than $500. (Sec. 12, act of March 4, 1927; 48 U.S.C. 471k, and notice approved March 7, 1929.)

office within a grace period of sixty days following the last day of the current lease period together with a showing satisfactory to the authorized office that the delay in rental payment was for unavoidable reasons and that termination of the lease would cause undue hardship to the lessee.

§ 4131.2–5 Reduction in excessive leased area.

Whenever, in the opinion of the manager, the leased land is excessive for the number of livestock to be grazed by the lessee, the manager may, after 30 days' notice to the lessee, reduce the lease area to the extent necessary, and the annual rental, if on an acreage basis, shall be reduced proportionately, effective at the beginning of the next lease year.

§ 4131.2–6 Free grazing permits.

Any person may file application in duplicate on a form approved by the Director, for a permit to graze, free of charge, not to exceed the number of livestock whose products are consumed or whose work is directly and exclusively used by the applicant or his family, for a term of not more than one year.

§ 4131.2–7 Leases.

(a) *Issuance of lease.* If the application is complete and it is determined that a lease should be issued, the manager will prepare a proposed lease, with necessary copies, on a form approved by the Director, for execution by the applicant. The forms, signed by the applicant, must be forwarded promptly to the manager, together with any required rental payment. The lease will be dated as of January 1 of the year in which it is issued, and the required rental for the first year will be adjusted on a pro rata monthly basis to cover that portion of the year subsequent to the lease issuance.

(b) *Report of grazing operations.* Before April 1 of the second lease year and each lease year thereafter, the lessee shall file with the manager a report, in duplicate, on a form approved by the Director, of his grazing operations during the preceeding year.

(c) *Assignments.* No part of the leased land may be subleased. Any proposed assignment of a lease, in whole or in part, must be filed in duplicate with the authorized officer within 90 days of its execution. Assignments will be executed on a form approved by the Director and must be accompanied by the application on a form approved by the Director, executed in duplicate, together with the same showing by the assignee as to qualifications and stock development schedule as would be required of applicants for a new lease, including financial responsibility when specifically requested by the manager. The assignee's acceptance of the lease offered pursuant to the grazing lease assignment shall constitute his acceptance of the lease terms. No assignment will be recognized nor will it confer on the assignee any rights to the leased area until a lease therefor is issued to him.

(d) *Renewals.* An application for renewal of a grazing lease should be executed and filed in duplicate on a form approved by the Director not less than four months but not more than eight months before the expiration date of the lease term. The renewal lease, if issued, will contain such terms and conditions as the manager may determine.

(e) *Rights reserved.* Grazing leases under this Subpart 4131 shall be subordinated to and shall be subject to modification or reduction by the manager to the extent necessary to permit:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water, and other resources on or in the leased lands, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses, pursuant to applicable public land laws, where the same are in the public interest or will not unduly interfere with the use of the area for grazing purposes.

(3) The temporary closing of portions of the leased area to grazing whenever, because of improper handling of the stock, overgrazing, fire or other cause, such action is deemed necessary to restore the range to its normal condition.

(f) *Restrictions.* No lessee may so enclose roads, trails or other highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the leased area; he shall not prevent legal hunting, fishing or trapping on the land, or the ingress of miners, mineral prospectors

and other persons entitled to enter the area for lawful purposes.

(g) *Termination.* A lease may be surrendered by the lessee upon prior written notice filed with the manager, effective upon the date indicated in such notice but no less than 30 days from the date of filing, provided the lessee has complied with the terms and conditions of the lease and has paid all charges due thereunder.

(h) *Cancellation.* A lease may be cancelled by the manager if the lease was issued improperly through error with respect to a material fact or facts, or if the lessee shall fail to comply with any of the provisions of the lease or of this Subpart 4131. No lease will be cancelled for default in complying with the provisions of the lease or of this Subpart 4131 until the lessee has been notified in writing of the nature of the default and has been afforded an opportunity to show why the lease should not be cancelled.

§ 4131.2–8 Stock driveways; crossing permits; quarantine regulations.

(a) *Stock driveways.* The manager may establish stock driveways for the regular crossing of livestock across public lands, in such form and manner as he may determine.

(b) *Crossing permits.* A permit for the crossing of livestock on a stock driveway or other public lands, including lands under grazing lease, may be issued free of charge, upon the filing of an application on a form approved by the Director, in duplicate, with the authorized officer at least 30 days prior to the date the crossing is to begin.

(c) *Quarantine regulations.* Persons driving or transporting stock across any public lands must comply with the quarantine and other sanitary laws prescribed by the Territorial or other proper authorities.

§ 4131.2–9 Range improvements.

(a) *Permits for construction and maintenance.* Application for a permit to construct and maintain range improvements should be filed with the authorized officer in duplicate on a form approved by the Director. The lessee, upon obtaining an executed permit from the authorized officer, may construct, maintain, and utilize authorized fences, buildings, corrals, reservoirs, wells, or other improvements needed for the exercise of the grazing privileges under the lease. The lessee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes. The lessee, upon written approval by the authorized officer, may improve by seeding or reseeding within the lease area and may harvest hay or ensilage from such seeded or reseeded areas provided that the forage so produced is used primarily as feed for the lessee's livestock. The authorized officer may approve the assignment of range improvements upon receipt of an application for such assignment on a form approved by the Director.

(b) *Removal of improvements and personal property.* (1) Improvements, fixtures, or personal property (other than livestock) may not be removed from the lands unless all moneys due the United States under the lease have been paid.

(2) If all moneys due have been paid and the lessee, on or before the termination of his lease in whole or in part for any reason, notifies the manager of his determination to leave on the land involved in such termination improvements, the construction or maintenance of which has been authorized, no other person shall use or occupy, under any permit, lease or entry under any public land law, the land on which such improvements are located, until there has been paid to the person entitled thereto the value of such improvements. If the interested parties are unable to reach an agreement as to such value, the amount may be fixed by the manager. All such agreements, to be effective, must be approved by the manager. The failure of the subsequent permittee, lessee, or entryman to pay the former lessee in accordance with such agreement will be just cause for the cancellation of the permit, lease, or entry.

(3) In the absence of a notice by the lessee in accordance with subparagraph (2) of this paragraph the lessee shall, within 90 days from the date of expiration or termination of the lease, and if all charges due thereunder have been paid, remove all personal property belonging to him, together with any fence, building, corral, or other removable range

improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

§ 4131.3 Disposition of leased lands.

§ 4131.3–1 Settlement, location, and acquisition.

Lands leased under the act are not subject to settlement, location, and acquisition under the nonmineral public land laws applicable to Alaska unless and until the authorized officer of the Bureau of Land Management determines that the grazing lease should be cancelled or reduced in order to permit, in the public interest and without undue interference with the grazing operations, the appropriate development and utilization of the lands (see § 4131.2–7(e)) and that the lands are suitable for and otherwise subject to the intended settlement, location, entry or acquisition. An application on the appropriate form or a notice on a form approved by the Director if applicable to the class of entry contemplated, will be accepted and treated as a petition for determination. Upon such determination and after not less than 30 days' notice thereof to the lessee the grazing lease may be cancelled or reduced to permit the settlement, location, entry or other acquisition of the lands so eliminated from the lease, and the petitioner will be accorded a preference right to settle upon or enter the lands in accordance with the determination.

§ 4131.3–2 Mineral prospecting, location and purchase.

Unless otherwise withdrawn therefrom, lands leased under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4131.5 Protests, hearings and appeals.

§ 4131.5–1 Protests.

Protests against an application for a lease should be filed in duplicate, with the manager, contain a complete disclosure of all facts upon which the protest is based, and describe the lands involved in such protest; and should be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to lease all or part of the land embraced in the application against which the protests is filed, the protest should be accompanied by an application for a grazing lease.

§ 4131.5–2 Hearings; appeals.

(a) Any lessee of or applicant for grazing privileges may procure a review of any action or decision of the authorized officer by filing with such officer an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. The filing of any such application and the conduct of the proceedings before an examiner shall be governed by Subpart 1852 of this chapter pertaining to contests.

(b) An appeal may be taken from any decision of the authorized officer to the Director of the Bureau of Land Management, and from any decision of the Director to the Secretary of the Interior, pursuant to Part 1840 of this chapter.

Subpart 4132—Grazing Permits (Reindeer)

§ 4132.0–3 Authority.

Section 12 of the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250k), authorizes the Secretary of the Interior to promulgate such rules and regulations as, in his judgment, are necessary to carry into effect the provisions of 48 U.S.C. 250–250n.

§ 4132.0–5 Definitions.

(a) "Reindeer" includes reindeer and such caribou as have been introduced into animal husbandry or have actually joined reindeer herds and the increase thereof.

(b) "Natives" include the native Indians, Eskimos, and Aleuts of whole or part blood inhabiting Alaska at the time of the Treaty of Cession of Alaska to the United States and their descendants of whole or part blood, together with the Indians and Eskimos who, since the year 1867 and prior to September 1, 1937, have migrated into Alaska from the Dominion of Canada, and their descendants of whole or part blood.

(c) "Bureau" means Bureau of Land Management.

(d) "Director" means Director, Bureau of Land Management.

(e) "Authorized Officer" means the Bureau official who has been authorized to issue a reindeer grazing permit.

(f) "The Act" means the Act of September 1, 1937 (50 Stat. 902; 48 U.S.C. 250, 250a–250p).

§ 4132.1 Conditions.

§ 4132.1–1 Lands subject to grazing permit.

Vacant and unreserved and unappropriated public lands are subject to inclusion in a reindeer grazing permit. Where these lands are within the natural migration routes of caribou, or when they have other important wildlife values, the lands may be included in a permit, at the discretion of the authorized officer after consultation with the Bureau of Sport Fisheries and Wildlife, subject to such special terms and conditions as may be jointly agreed upon. Public lands which have been withdrawn for any purpose may also be included in a grazing permit with the prior consent of the Department or agency having administrative jurisdiction thereof, and subject to such additional terms and conditions as such Department or agency may impose.

§ 4132.1–2 Qualifications of applicants.

An applicant is qualified if he is a native or group, association or corporation of natives as defined by the Act of September 1, 1937, organized under the laws of the United States or the State of Alaska.

§ 4132.1–3 No rights acquired by applicant prior to issuance of grazing permit.

The filing of an application will not segregate the land applied for from application by other persons for a grazing permit, or from other disposition under the public land laws. As the issuance of a grazing permit is discretionary, the filing of an application will not create a right for such a permit, or to the use of the lands applied for pending the issuance of a grazing permit.

§ 4132.1–4 Rights reserved; public land laws applicable.

(a) Grazing permits under this Subpart 4132 shall be subordinated to higher uses and subject to modification or reduction by the authorized officer to the extent necessary to allow:

(1) The protection, development and utilization, under applicable laws and regulations, of the mineral, timber, water and other resources on or in the lands included in the grazing permit, including their use for agriculture.

(2) The allowance of applications for and the acquisition of homesites, easements, permits, leases, or other rights and uses pursuant to applicable public land laws.

(3) The temporary closing of portions of the permitted area to grazing whenever, because of improper handling of the reindeer, overgrazing, fire, or other cause, such action is deemed necessary to restore the range to its normal condition.

(b) No permittee may so enclose roads, trails, or highways as to disturb public travel thereon, nor interfere with existing communication lines or other improvements on the permitted area; he shall not prevent legal hunting, fishing or trapping on the land, or ingress of miners, mineral prospectors and other persons entitled to enter the area for lawful purposes.

(c) Persons using public lands for grazing of reindeer or for driving of reindeer across such lands must comply with applicable State and Federal laws relative to livestock quarantine and sanitation.

§ 4132.1–5 Location, settlement, entry, and other disposition of lands included in grazing permit; notice to permittee of disposition and reduction of permitted area.

(a) Lands included in grazing permits under the act are subject to settlement, location, and acquisition under the non-mineral public land laws applicable to the State of Alaska.

(b) Upon settlement, location or entry of any lands included within a reindeer grazing permit, the permittee shall be notified of the settlement, location or entry, and the permitted area shall be reduced by the area involved in the settlement, location or entry.

(c) Unless otherwise withdrawn therefrom lands included in grazing permits under the act are subject to disposition under the mineral leasing laws and to mineral prospecting, location, and purchase under the mining laws, in accordance with the applicable regulations of Group 3400 of this chapter.

§ 4132.2 Procedures.

§ 4132.2–1 Application for grazing permit.

(a) *Form used.* An application for a grazing permit must be executed in du-

plicate on a form approved by the Director and filed in the Bureau office which has jurisdiction over lands applied for.

(b) *Bureau of Indian Affairs certification.* A certification of reindeer allotment to the applicant, signed by the authorized Bureau of Indian Affairs officer, must accompany the application if the applicant is to receive a herd from the Government.

(c) *Source of reindeer other than Government.* If reindeer are to be obtained from a source other than the Government, the applicant should state the source and show evidence of his purchase or option to purchase.

(d) *Listing of improvements.* With the initial application for any grazing permit issued under this Subpart 4132, the applicant must list by location and description the improvements found in the area under application which are owned by the applicant. Such statement of ownership will be verified by a Bureau of Indian Affairs official prior to submitting it to the Bureau of Land Management. Such existing improvements will be permitted by the terms of the initial grazing permit. Improvements to be constructed subsequent to the issuance of the initial grazing permit must be under permit in accordance with § 4132.2–9.

§ 4132.2–2. Filing fee; grazing fee.

A filing fee of $10 must accompany each application for a reindeer grazing permit or application for renewal thereof. No grazing fee will be charged.

§ 4132.2–3 Term of grazing permit; renewals.

(a) Reindeer grazing permits shall be issued for a maximum term of 10 years, except where the applicant desires a shorter term, or where the authorized officer determines that a shorter period will be in the public interest.

(b) Application for renewal of a grazing permit shall be made not less than four months or more than eight months before the expiration date of the permit. The authorized officer may at his discretion offer the permittee a renewed grazing permit containing such terms, conditions, and of such duration as he determines to be in the public interest.

§ 4132.2–4 Area of use and maximum number of reindeer.

(a) Permits will restrict grazing use to a definitely described area. Grazing permits will be granted only for such areas as may be deemed adequate and usable according to the needs of the permittee.

(b) The grazing permit will indicate the maximum number of reindeer which may be grazed on the permitted area, based on range conditions, and will be subject to adjustment as the condition of the range indicates.

§ 4132.2–5 Adjustment of grazing permit area.

The permitted area may be reduced at any time, after not less than 30 days notice to the permittee, when in the opinion of the authorized officer the area is excessive for the number of reindeer grazed thereon. The permit may be increased by the authorized officer on his own motion or upon request of the permittee, when in the opinion of the authorized officer the area is insufficient for the number of reindeer grazed thereon. The permittee shall have opportunity within such notice period to show cause why the area included in the grazing permit should not be adjusted.

§ 4132.2–6 Report of grazing operations; assignments allowed.

(a) Before April 1 of the second permit year and each year thereafter, the permittee shall file with the authorized officer a report in duplicate of his grazing operations during the preceding year on an approved form.

(b) No part of the land included in the permit may be subleased. Proposed assignments of a permit, in whole or in part, must be filed in duplicate with the authorized officer within 90 days from the date of its execution. Such assignments must contain all of the terms and conditions agreed upon by the parties thereto, accompanied by the same showing by the assignee as to qualifications and a reindeer allotment as is required of applicants for a permit, and by the assignee's statement agreeing to be bound by the provisions of the permit. No assignment shall be effective until approved by the authorized officer.

§ 4132.2–7 Termination of grazing permit; cancellation.

(a) A grazing permit may be surrendered by the permittee upon prior written notice filed with the authorized officer, effective upon the date indicated in such notice, but not less than 30 days from the date of filing.

(b) A grazing permit may be cancelled by the authorized officer if the permit was issued improperly through error with respect to a material fact or facts, or if the permittee shall fail to comply with any of the provisions of the permit or of this Subpart 4132. No permit shall be cancelled for default in complying with the provisions of the permit or of this Subpart 4132 until the permittee has been notified in writing of the nature of the default and has been afforded an opportunity of not less than 30 days to show why the permit should not be cancelled.

§ 4132.2–8 Crossing permits.

A permit for the crossing of reindeer over public lands, including lands under grazing permit, may be issued free of charge, upon application filed with the authorized officer at least 30 days prior to the date the crossing is to begin. The application must show the number of reindeer to be driven, date of starting, approximate period of time required, and the land to be traversed.

§ 4132.2–9 Permits for construction and maintenance of improvements; removal.

(a) Application for a permit to construct and maintain range improvements should be filed, in duplicate, with the authorized officer on an approved form. The grazing permittee, upon obtaining a permit from the authorized officer, may construct, maintain and utilize any fence, building, corral, reservoir, well, or other improvement needed for the exercise of the grazing privileges under the grazing permit. The permittee will be required to comply with the laws of the State of Alaska with respect to the construction and maintenance of fences, but any such fence shall be constructed to permit the ingress and egress of miners, prospectors for minerals, and other persons entitled to enter such area for lawful purposes.

(b) The permittee, within 90 days from the date of expiration or termination of the grazing permit, or within any extension of such period, shall be allowed to remove all personal property belonging to him, together with any fence, building, corral, or other removable range improvements owned by him. All such property which is not removed within the time allowed shall thereupon become the property of the United States.

§ 4132.3 Protests and appeals.

(a) Protests against an application for a grazing permit shall be filed in duplicate, with the authorized officer; contain a complete disclosure of all facts upon which the protest is based; and describe the lands involved in such protests. It shall be accompanied by evidence of service of a copy of the protest upon the applicant. If the protestant desires to obtain a grazing permit for all or part of the land embraced in the application against which the protest is filed, the protest shall be accompanied by an application for a grazing permit.

(b) An appeal may be taken from any decision of the authorized officer to the Director, and from any decision of the Director to the Secretary, pursuant to Appeals and Contests (Parts 1840 and 1850 of this chapter).

§ 4132.4 Trespass.

(a) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in this Subpart 4132 is unlawful and is prohibited.

(b) Any person who wilfully violates any of the rules and regulations in this Subpart 4132 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than $500.

This Circular replaces Circulars 1929, 2006, 2074, 2129 and that portion of 2178 relating to Part 4130.

GPO 839-432

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2237]

PART 2210—OCCUPANCY

Subpart 2215—Mining Claims Occupancy Act

MISCELLANEOUS AMENDMENTS

1. Paragraphs (a) and (e) of § 2215.0–3 are amended to read:

§ 2215.0–3 Authority.

(a) The Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701–709), hereinafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to convey to any qualified applicant who is an occupant of an unpatented mining claim which is determined by the Secretary to be invalid, an interest, up to and including a fee simple, in and to an area within the claim of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less. The Act permits the Secretary to make a like conveyance to any occupant of an unpatented mining claim, who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Such conveyances may be made only to a qualified applicant who applies therefor within the period ending June 30, 1971, and upon payment of an amount established in accordance with the Act.

* * * * *

(e) The Act provides that the execution of any conveyance thereunder does not relieve an applicant of any liability, existing on the date of the conveyance, to the United States, for unauthorized use of the land in and to which an interest is granted. However, it provides that with respect to persons who file applications for conveyance pursuant to the Act within the period ending June 30, 1971, trespass charges shall not be sought or collected from any qualified applicant who has filed an application for land in the mining claim pursuant to the Act, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary or the voluntary relinquishment of the mining claim, whichever occurs earlier, provided that the mining claim embracing the land applied for was not located at a time when the land included therein was withdrawn or otherwise not subject to location.

2. Paragraph (a) of § 2215.2 is amended to read:

§ 2215.2 Applications.

(a) Applicants must file applications on or before June 30, 1971, in the proper land office (see § 821.2–1 of this chapter).

* * * * *

DAVID S. BLACK,
Under Secretary of the Interior.

DECEMBER 8, 1967.

[F.R. Doc. 67–14502; Filed, Dec. 13, 1967; 8:45 a.m.]

Published in 32 F.R. 17890, December 14, 1967 - Effective as of October 23, 1967.

Circular Distribution List

GPO 840 - 100

Betty

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2237]

PART 2210—OCCUPANCY

Subpart 2215—Mining Claims Occupancy Act

MISCELLANEOUS AMENDMENTS

Replaced by Circ. 2294

1. Paragraphs (a) and (e) of § 2215.0–3 are amended to read:

§ 2215.0–3 Authority.

(a) The Act of October 23, 1962, as amended (76 Stat. 1127; 30 U.S.C. 701–709), hereinafter referred to as "the Act", authorizes the Secretary of the Interior, in his discretion, to convey to any qualified applicant who is an occupant of an unpatented mining claim which is determined by the Secretary to be invalid, an interest, up to and including a fee simple, in and to an area within the claim of not more than (1) five acres, or (2) the acreage actually occupied by him, whichever is less. The Act permits the Secretary to make a like conveyance to any occupant of an unpatented mining claim, who, after notice from a qualified officer of the United States that the claim is believed to be invalid, relinquishes to the United States all right in and to such claim which he may have under the mining laws. Such conveyances may be made only to a qualified applicant who applies therefor within the period ending June 30, 1971, and upon payment of an amount established in accordance with the Act.

* * * * *

(e) The Act provides that the execution of any conveyance thereunder does not relieve an applicant of any liability, existing on the date of the conveyance, to the United States, for unauthorized use of the land in and to which an interest is granted. However, it provides that with respect to persons who file applications for conveyance pursuant to the Act within the period ending June 30, 1971, trespass charges shall not be sought or collected from any qualified applicant who has filed an application for land in the mining claim pursuant to the Act, based upon occupancy of such claim, whether residential or otherwise, for any period preceding the final administrative determination of the invalidity of the mining claim by the Secretary or the voluntary relinquishment of the mining claim, whichever occurs earlier, provided that the mining claim embracing the land applied for was not located at a time when the land included therein was withdrawn or otherwise not subject to location.

2. Paragraph (a) of § 2215.2 is amended to read:

§ 2215.2 Applications.

(a) Applicants must file applications on or before June 30, 1971, in the proper land office (see § 821.2–1 of this chapter).

* * * * *

DAVID S. BLACK,
Under Secretary of the Interior.

DECEMBER 8, 1967.

[F.R. Doc. 67–14502; Filed, Dec. 13, 1967; 8:45 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2238]

PART 1720—PROGRAMS AND OBJECTIVES

Subpart 1727—Designation of Areas and Sites

DESIGNATION OF NATURAL RESOURCE EXPERIMENT AND RESEARCH AREAS

A new subparagraph is added to § 1727.1(b) to read as follows:

§ 1727.1 Areas or sites that may be designated.

* * * * *

(b) * * *

(4) *Natural resource experiment and research areas.* These are relatively small areas of land which are used for research or experimental purposes.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 5, 1968.

[F.R. Doc. 68-463; Filed, Jan. 11, 1968; 8:47 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2239]

Replaced by 2351

PART 2240—SALES AND EXCHANGES

Subpart 2244—Exchanges

MISCELLANEOUS AMENDMENTS

Subpart 2244 is revised in its entirety to read as follows:

Subpart 2244—Exchanges

§ 2244.0–1 Purpose.

The regulations in this subpart provide procedures for processing exchanges of U.S. property for other property.

§ 2244.0–2 Objectives.

The discretionary authority of the Secretary of the Interior to make exchanges will be used to consolidate land holdings of the United States, and to establish land ownership and use patterns which will permit more effective administration of the public lands of the United States, the stability of communities and enterprises dependent on the public lands, and other program objectives described in Subpart 1725 of this chapter.

§ 2244.0–5 Definitions.

(a) As used in this part the term "person" includes any person or entity legally capable of conveying and holding real property under the laws of the States within which the property is located.

§ 2244.1 Provisions applicable to all exchanges.

Except where otherwise noted in the regulations of this Subpart 2244, the regulations in this § 2244.1 are applicable to all exchanges.

§ 2244.1–1 Basis for exchange.

The fair market value of the property conveyed to the United States in any exchange shall not be less than the fair market value of the United States property exchanged therefor.

§ 2244.1–2 Applications.

(a) Preliminary negotiations: Preliminary negotiations for exchanges must be conducted with the Federal bureau or agency which would administer the offered lands if the exchange were completed. Any person who holds an interest in property within the boundaries of the area of responsibility of such Federal bureau or agency and who desires to negotiate an exchange with the United States must file with the appropriate field officer of that bureau or agency an informal proposal, in writing, describing the property which is to be offered to the United States and the property which is desired in exchange. After consultation with the authorized officer of the bureau or agency which has jurisdiction over the property desired by the proponent, the appropriate field officer will notify the proponent in writing whether the proposal appears feasible and, if so, whether any adjustments appear necessary for its consummation.

(b) Formal application:

(1) Any person desiring to effect an exchange hereunder must file with the Bureau of Land Management an application, in duplicate, on a form approved by the Director, Bureau of Land Management, or its equivalent, properly describing the offered and selected property. If the selected property is surveyed, it must be described by legal subdivisions of the public land surveys. The documents must be filed in accordance with the provisions of § 1821.2 of this chapter. The application must be accompanied by the notice required by paragraph (a) of this section, stating that the proposal appears feasible.

(2) The application must also include a corroborated statement relative to springs and water holes on the selected property, in accordance with §§ 2321.1–1(a) to 2321.1–2(d) of this chapter.

(3) The application must state that the value of the selected property does not exceed the value of the offered property. In a case where, by statute, equalization of values is permitted by a cash payment, the amount of cash payment that must be made to equalize values shall be stated in the application.

(c) Classification of land: No preliminary negotiations will be conducted, and no application will be accepted for lands administered by the Bureau of Land Management which have not been classified as proper for disposal by exchange, consistent with the provisions of Part 2410 of this chapter. This does not, however, prevent an interested agency from requesting that the authorized officer of

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the Bureau of Land Management schedule classification action, in accordance with the provisions of Part 2410 of this chapter, for any lands which the interested agency considers may have value for exchanges.

(d) The applicant must be legally capable, under the laws of the State in which the offered property is located, of consummating the exchange. The application must state that the applicant is the owner of the interest in the property offered in exchange and that such offered interest is not the basis of any other exchange.

(e) Deed to the United States:

(1) Owners of private property will be required to submit a warranty deed of conveyance of the offered property to the United States, properly executed, acknowledged, and recorded in accordance with the laws of the State in which the property is situated. Revenue stamps required by Federal and State law must be affixed to the deed and canceled. A deed executed by an individual grantor must disclose his marital status. If married, the spouse of the grantor must join in the execution of the deed to bar any right of curtesy, dower, community interest, or any other claim to the property conveyed, or it must be fully shown that under the laws of the State in which the conveyed property is situated, the grantor's spouse has no interest, present or prospective, in the property. A deed executed by a corporation must recite that it was executed pursuant to a resolution or order of its board of directors, or other governing body, and a copy of such resolution or order must accompany the deed. The corporate seal must be affixed to both instruments.

(2) States will be required to submit a deed of conveyance of the offered property to the United States, properly executed, acknowledged, and duly recorded in accordance with the laws of the State making the exchange, together with a certificate of the proper State officer showing that the officer executing the conveyance was authorized to do so under the State law.

(3) Holders of unperfected claims and Indian trust patents will not be required to submit a deed of conveyance. In lieu thereof, they will be required to submit a relinquishment of the claim or trust patent to the United States, witnessed by two persons and acknowledged before a notary public or other official with a seal. The relinquishment must contain a statement that the applicant has not sold, assigned, mortgaged, or contracted to sell, assign, or mortgage the land covered by the unperfected claim or relinquished allotment.

(4) All deeds and relinquishments must state that they are made "for and in consideration of the exchange of certain lands, as authorized by" the appropriate act of the Congress.

(5) Where appropriate, the deed shall recite that the conveyance is made to the United States, "as grantee in trust" for the appropriate Indian tribe or group.

(f) Taxes and equalizing money: Where taxes which have been assessed or levied on the offered property constitute liens against the property although such taxes are not due and payable at the time of the recordation of the deed to the United States, the applicant may furnish a bond with a qualified surety for double the amount of taxes paid on the property for the previous year, or, in lieu of a bond, a cash deposit in like amount, to secure the payment of such taxes. When proper evidence of payment in full of such taxes is furnished by the applicant, liability under the bond will be terminated or the cash deposit will be returned to him. Cash deposit or bond for taxes and, where applicable, cash payment of the amount determined to be needed to equalize values, will be payable upon request of the authorized officer of the Bureau of Land Management.

(g) Evidence of title:

(1) Owners of private property offered in exchange must submit as evidence of title to the offered lands a policy of title insurance on the form prescribed by the Department of the Interior (Form 4–1202), or on the form approved by the Attorney General (See "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the Department of Justice, 1964 ed.); or a certificate of title issued by a title insurance company authorized by law to issue same, or an abstract of title prepared and authenticated by a licensed abstractor or abstract company or by the recorder of deeds or other proper officer of the State under his official seal.

(2) States must submit satisfactory evidence of title to the offered property. (i) If the offered property was ever held in private ownership, certificate of title, or an abstract of title as prescribed in subparagraph (1) of this paragraph must be submitted. (ii) If the offered property was never held in private ownership the State must submit a certificate of the proper State officer showing that the offered property had not been sold or otherwise encumbered by the State, and a certificate by the recorder of deeds or other proper officer under his official seal or by an abstrator or abstract company that no instrument purporting to convey or in any way encumber title to the offered property is of record or on file.

(3) Holders of unperfected claims and Indian trust patents must file a certificate of the recorder of deeds or other proper officer under his official seal or of an abstractor or abstract company that no instrument purporting to convey or in any way encumber title to the offered land is of record or on file.

(h) Segregation of the land: The filing of a valid formal application for exchange under the regulations of this subpart will segregate the selected public lands to the extent that they will not be subject to appropriation under the public land laws, including the mining laws,

and that any subsequently tendered application, allowance of which is discretionary, will not be accepted, will not be considered as filed, and will be returned to the applicant. The segregative effect of an application on the lands covered by the application will terminate at 10 a.m. on the 30th day from and after the date a notice of the withdrawal or rejection of the application is first posted in the land office having jurisdiction over said lands.

§ 2244.1–3 Publication.

Upon a determination by the authorized officer of the bureau or agency having jurisdiction over the selected property and the authorized officer of the bureau or agency which will administer the offered property, if the exchange is completed, that the exchange is consistent with the law and regulations and is otherwise in the public interest, notice of the proposed exchange will be published by the Bureau of Land Management. The notice of publication will give the name and post office address of the applicant, the serial number and date of the application, a reference to the statute authorizing the exchange, and the description of the offered and selected property. It will also state that all persons asserting a claim to the selected property or having bona fide objections to the exchange may file their protests or other objections in the office designated in the notice, together with evidence that a copy of such protest or objections has been served upon the applicant. The notice will be published once a week for 4 consecutive weeks in a designated newspaper of general circulation in the county or counties in which the offered property is situated, and in the same manner in a newspaper of general circulation in the county or counties in which the selected property is situated. Proof of publication of notice shall consist of a certificate by the publisher or foreman or other authorized employee of the newspaper, specifying the dates of publication, attached to a copy of the notice as published.

§ 2244.1–4 Approval of exchange; right to reject; unperfected claims.

(a) *Approval of exchange.* (1) The criteria in Parts 1720 and 2410 of this chapter and the provisions of appropriate law shall be used in determining whether an application for exchange should be approved.

(2) After examination of the title and other evidence required of the applicant, if all be found regular and in conformity with the law and regulations, and there are no objections, the authorized officer may accept title to the property offered and conveyed to the United States. He will then issue a patent or other instrument of transfer for the property selected in exchange and, where authorized by law, will transmit to the applicant the cash payment, if any, necessary to equalize the values.

(b) *Right to reject.* (1) An application may be rejected at any time prior to the issuance of patent or other instrument of transfer. Exchanges will not be consummated, in the discretion of the authorized officer when, for example, after public notice—

(i) An appropriate public requirement for the selected property is identified, or

(ii) Information is received which establishes that the exchange is not in the public interest.

(2) Changes in values, after publication of the notice required by § 2244.1–3, will ordinarily not be a basis for rejection of an application, all other factors being equal.

(3) Prior to issuance of patent, no action taken shall establish any contractual or other rights against the United States, or create any contractual or other obligation of the United States.

(c) *Unperfected claims.* When the offered lands are embraced in unperfected claims, patents will not issue for the selected lands until the applicant complies with all the requirements of the law and regulations under which the unperfected claims have been held. The applicant will be credited with all acts of compliance whether earned in connection with the offered lands or selected lands or both.

§ 2244.1–5 Removal of improvements; return of title evidence.

(a) When any buildings, fencing, or other movable improvements owned or erected by an applicant on the land relinquished or conveyed are not a part of the offer to relinquish or convey, the applicant may remove such improvements from the land upon receipt of notice that the exchange has been approved, provided that such removal is accomplished within the time period specified in said notice.

(b) If an applicant has submitted deed and title evidence in connection with an exchange and his application is rejected, the evidence of title will be returned to the applicant. If the deed was recorded, a quitclaim deed for the land conveyed to the United States will be issued under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. sec. 872).

§ 2244.1–6 Costs and fees.

Whenever the law permits, the bureau or agency which will administer the offered lands if the exchange is consummated will be required to do the following:

(a) *Appraisals.* At the request and with the approval of the authorized officer of Bureau of Land Management, arrange, by contract or otherwise, for the services of appraisers, for the purpose of appraising both the offered and selected property.

(b) *Publication and securing title evidence.* Pay for costs of publication of the exchange and of securing title evidence for the offered property, except as provided otherwise in other sections of this subpart.

(c) *Processing.* At the request of authorized officers of Bureau of Land Management, reimburse the Bureau of Land Management and the bureau having jurisdiction over the selected lands, if other than the Bureau of Land Management, for any costs incurred by them in processing an exchange filed pursuant to the regulations in this subpart.

(d) *Service or filing fees.* Where the law permits, no service or filing fees shall be required in connection with an application for exchange.

§ 2244.2 Exchanges with States under the Taylor Grazing Act.

§ 2244.2–1 Authority.

(a) Subsections (c) and (d) of section 8 of the Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C. sec. 315g), authorize exchanges of lands between the United States and a State, upon the application of the State, and provide for the issuance of patent for the selected lands upon acceptance of title to the lands conveyed to the United States in exchange therefor.

(b) Lands offered in exchange by a State may be State-owned lands within or without the boundaries of a grazing district, and the selected lands may be surveyed grazing district lands not otherwise appropriated or reserved, or unappropriated and unreserved surveyed public lands of the United States, within the same State. If, however, the selected lands are within a grazing district, the lands offered by the State must be within the same grazing district and the selected lands must lie in a reasonably compact body which is so located as not to interfere with the administration or value of the remaining lands in the district for grazing purposes.

(c) Unsurveyed school sections within or without the boundary of a grazing district may be offered by the State in an exchange based upon equal areas, but the Secretary of the Interior will consider and determine whether the values of the offered and selected lands are approximately equal for the purpose of the exchanges. No mineral reservations to the State may be made in such unsurveyed sections, the identification of which will be determined by protraction or otherwise, the State by such selections waiving all rights to the unsurveyed sections.

(d) State-owned lands, as well as school sections surveyed and unsurveyed, the title to which has not yet vested in the State, located within national forests, national parks and monuments, Indian or other reservations or withdrawals, may be offered as a basis for an exchange under said section 8 of the Taylor Grazing Act as amended, where the selected lands are not within a grazing district. Where the selected lands are within a grazing district, lands within the exterior boundaries of the grazing district and also within such reservations or withdrawals may be offered as a basis for an exchange only if the authorized officer, Bureau of Land Management, determines that the exchange would not interfere with the administration or value of the remaining lands in the grazing district for grazing purposes.

(e) Either party to an exchange may make reservations of minerals, easements, or rights of use. The right to enjoy reservations made in lands conveyed to or by the United States shall be subject to such reasonable conditions respecting ingress and egress and the use of the surface of the lands as the authorized officer deems necessary.

(f) Lands conveyed to the United States pursuant to a State exchange under this section, upon acceptance of title thereof, become public lands. If the lands are located within the exterior boundaries of a grazing district, they become a part of that district.

(g) Where a State exchange under this section involves lands embraced in outstanding grazing leases under section 15 of the Taylor Grazing Act (43 U.S.C., sec. 315m) issued prior to the filing of the State exchange application, the Secretary of the Interior, upon the request of the State, may issue patent to the State, subject to such outstanding lease, in accordance with the Act of August 24, 1937 (50 Stat. 748; 43 U.S.C. sec. 315p).

(h) The State is responsible for payment of one-half the cost of publication.

§ 2244.2–2 Program.

The program of the Secretary of the Interior is to cooperate with the States to effect mutually advantageous exchanges and to process State proposals for exchange as rapidly as possible, consistent with the law and the regulations of this subpart.

§ 2244.2–3 Applicable regulations.

All the provisions of § 2244.1 apply to State exchanges except:

(a) States may file applications for exchanges without meeting the requirements for preliminary negotiations.

(b) State exchanges are not subject to the classification requirements of Parts 2410 and 2411 of this chapter.

§ 2244.3 National forest exchanges.

§ 2244.3–1 Authority.

The Act of March 20, 1922 (42 Stat. 465), as amended (16 U.S.C., sec. 485), and other acts authorize the United States to convey Federal lands or timber and in exchange therefor to accept title to non-Federal lands which thereupon become a part of the national forest system administered by the Secretary of Agriculture.

§ 2244.3–2 Applicable regulations.

All proposals for exchange for the consolidation or extension of national forests shall be filed with the appropriate officer of the Forest Service, U.S. Department of Agriculture in compliance with the regulations of the Secretary of Agriculture. In addition, when an application involves the selection of public lands outside of national forests and under the administrative jurisdiction of the Bureau of Land Management, the proponents must comply with the regulations in § 2444.1.

§ 2244.4 Other exchanges.

The following exchanges are subject to the provisions of § 2244.1.

§ 2244.4–1 O&C exchanges.

(a) *Authority.* The Act of July 31, 1939 (53 Stat. 1144), authorizes and empowers the Secretary of the Interior,

in his discretion, in the administration of the act approved August 28, 1937 (50 Stat. 874), to exchange any nonmineral land formerly granted to the Oregon and California Railroad Co., title to which was revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218), and any land granted to the State of Oregon, title to which was reconveyed to the United States by the Southern Oregon Co. pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), for lands of approximately equal aggregate value held in private, or State, or county ownership, either within or contiguous to the former limits of such grants, when by such action the Secretary of the Interior will be enabled to consolidate advantageously the holdings of lands of the United States. The act further provides that all lands and timber secured by the United States pursuant to any such exchange shall be administered in accordance with the same provisions of law as the revested and reconveyed lands exchanged therefor, and that parties to the exchange may make reservations of easements, rights-of-way, and other interests and rights. Both the offered and selected lands in Coos Bay Wagon Road exchanges must be in the same county.

(b) *Program*—(1) *Forest management.* The Act of August 28, 1937 (50 Stat. 874), provides for the conservation of land, water, forest, and forage on a permanent basis; the prudent utilization of these resources for the purposes to which they are best adapted; and the realization of the highest current values consistent with undiminished future returns. It seeks, through the application of the policy of sustained-yield management, to provide perpetual forests which will serve as a foundation for continuing industries and permanent communities.

(2) *Exchanges.* (i) Lands and timber to be acquired under authority of the Act of July 31, 1939, will be of a character and so located that the acquisition thereof will promote the conservation principles laid down by the Act of August 28, 1937. Lands and timber which will be disposed of by exchange will be of such a type and so located that the transfer of these resources will not interfere with those principles. Exchanges will not be authorized where the exchange would create a serious disturbance of existing economic conditions; or in cases where the exchange would operate materially to reduce the revenues which should accrue to the counties under authority of the Act of August 28, 1937. Neither can approval be given to the exchange of lands which would prevent the free and ready access of the Government in the development of the resources under its jurisdiction, nor the passing of title to which would in any way interfere with the policy of sustained-yield forest management which governs the administration of the O. and C. lands.

(ii) The primary objectives sought by the Act of July 31, 1939, include the following:

(*a*) Simplification of administration, improvement, and protection through the consolidation of holdings.

(*b*) The development of a balanced distribution of age classes of timber with a view to promoting the policy of sustained-yield forest management provided for in the Act of August 28, 1937.

(*c*) The establishment of sustained-yield management units, with a view to sustaining dependent industry, dependent labor and dependent communities.

(*d*) The effective administration of forest units.

(*e*) Aid in establishing economic operating units for combined agricultural and grazing enterprises, where such enterprises appear to provide the most desirable use of the land.

(*f*) The protection of recreational, open space, and natural beauty values against impairment or destruction.

§ 2244.4–2 Private exchanges under Taylor Grazing Act.

(a) *Authority.* Subsections (b) and (d) of section 8 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1272), as amended (43 U.S.C., sec. 315g), authorize the Secretary of the Interior, when the public interests will be benefited thereby, to accept on behalf of the United States title to any privately owned land within or without the boundaries of a grazing district and in exchange therefor to issue a patent for not to exceed an equal value of surveyed grazing district land or of unreserved surveyed public land in the same State or within a distance of not more than 50 miles within the adjoining State nearest the privately owned land. Either party to an exchange may make reservations of minerals, easements, or rights of use. The applicant must pay one-half the cost of publication.

§ 2244.4–3 Indian reservation exchanges.

(a) *Executive order reservations.* The Act of April 21, 1904 (33 Stat. 211; 43 U.S.C., sec. 149), authorizes the Secretary of the Interior to exchange any vacant, nonmineral, nontimbered, surveyed public lands located in the same State as the offered lands for any privately owned lands over which an Indian reservation has been extended by Executive order. The offered and selected lands must be approximately equal both in value and area. The applicant must pay all costs of consummating the exchange.

(b) *San Juan, McKinley, and Valencia Counties, N. Mex.* Section 13 of the Act of March 3, 1921 (41 Stat. 1239), authorizes the Secretary of the Interior to exchange any vacant, surveyed public lands, including any lands reconveyed under this act, in San Juan, McKinley, and Valencia Counties, N. Mex., for any privately owned lands, State school lands (except those granted by the act of January 25, 1927, 44 Stat. 1026, as amended (43 U.S.C. 870)), and lands covered by valid unperfected claims, and by Indian allotments and Indian allotment selections in such counties. The exchange must serve to consolidate the holdings of the applicant, who must own land in the same township in which the selected lands are located.

(c) *Apache, Coconino, and Navajo Counties, Ariz.* Section 2 of the Act of June 14, 1934 (48 Stat. 961), as supplemented by the Act of May 9, 1938 (52 Stat. 300), authorizes the Secretary of the Interior to exchange (1) any vacant, nonmineral, surveyed public lands in Apache, Navajo, and Coconino Counties, Ariz., for any privately owned lands in Apache and Coconino Counties and in that portion of Navajo County north of the townships line between Townships 20 North and 21 North, Gila and Salt River Meridian, and (2) any available lands within the reservation described in the above-mentioned act of 1934 for any lands covered by Indian allotments and Indian allotment selections in the three mentioned counties. Applicants may select public lands containing springs or other living waters only if the offered lands contain similar waters. If an applicant reserves oil, gas, and other minerals in the offered lands, a like reservation will be made in the selected lands.

(d) *Reservations established by statute.* Exchanges and lieu selections involving lands within Indian reservations occur infrequently. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the general regulations of § 2244.1 for exchanges, and of § 2244.2 for State lieu selections.

§ 2244.4–4 National Park System exchanges.

(a) *General.* Exchanges to eliminate private holdings from national parks and national monuments for which no specific provisions are made in this section have generally reached the limits allowed by enabling legislation. Regulations covering such transactions are, therefore, not codified. Any such transactions will be handled in a manner consistent with the authorizing laws and with the regulations in § 2244.1.

(b) *Point Reyes National Seashore, Calif.* The Act of September 13, 1962 (76 Stat. 538; 16 U.S.C., secs. 459c–459c–7), providing for the establishment of the Point Reyes National Seashore in the State of California, authorizes the Secretary of the Interior, when the public interest will be benefited thereby, to acquire land, waters, and other property within the boundaries of the Point Reyes National Seashore by exchange. He may accept title to any non-Federal property located within such area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary within Arizona, California, Nevada, and Oregon, notwithstanding any other provision of law. The properties so exchanged shall be approximately equal in fair market value, provided that when such values are not equal the Secretary may accept cash from or pay cash to the grantor in such an exchange in order to equalize the value of the properties exchanged.

(c) *Fire Island National Seashore.* The Act of September 11, 1964 (78 Stat. 928; 16 U.S.C., secs. 459e–459e–9), authorizes the Secretary of the Interior to establish an area to be known as the "Fire Island National Seashore" and to acquire by exchange lands within the boundaries of the seashore as specified in the act. When acquiring land by exchange the Secretary may accept title to any nonfederally owned land located within the boundaries of the national seashore and may convey to the grantor any federally owned land under his jurisdiction. The properties so exchanged shall be approximately equal in fair market value, but the Secretary may accept cash from or pay cash to a grantor in order to equalize the values of the lands exchanged.

(d) *Lake Mead National Recreational Area.* The Act of October 8, 1964 (78 Stat. 1039, 16 U.S.C., secs. 460n–460n–9) authorizes the Secretary of the Interior to revise the boundaries of the Lake Mead National Recreation Area and to procure property within the exterior boundaries of such area in such manner as he shall consider to be in the public interest. In exercising his authority to acquire property by exchange, the Secretary may accept title to any non-Federal property located within the boundaries of the recreation area and convey to the grantor of such property any federally owned property under the jurisdiction of the Secretary. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the values of the properties exchanged.

(e) *Whiskeytown-Shasta-Trinity National Recreation Area, Calif.* The Act of November 8, 1965 (79 Stat. 1295) authorizes the Secretary of the Interior to administer the Whiskeytown unit of the Whiskeytown-Shasta-Trinity National Recreation Area. The Secretary is authorized to accept title to any non-Federal property within any part of the recreation area and in exchange therefor to convey to the grantor any federally owned property under his jurisdiction within the State of California which he classifies as suitable for exchange or disposal. The properties so exchanged shall be approximately equal in fair market value, provided that the Secretary may accept cash from or pay cash to the grantor in an exchange in order to equalize the value of the properties exchanged.

§ 2244.4–5 Wildlife refuge exchanges.

(a) Section 4(b)(3) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire lands or interests therein by exchange (1) for acquired lands or public lands under his jurisdiction which he finds suitable for disposition, or (2) for the right to remove, in accordance with such terms and conditions as the Secretary

may prescribe, products from the acquired or public lands within the National Wildlife Refuge System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(b) Section 2(b) of the Act of October 15, 1966 (80 Stat. 926), authorizes the Secretary of the Interior to acquire by purchase, donation, or otherwise, lands or interests therein necessary for the conservation, protection, restoration, and propagation of selected species of native fish that are threatened with extinction.

(c) Section 1 of the Act of August 22, 1957 (71 Stat. 412), as amended (16 U.S.C. 696) authorizes the Secretary of the Interior to acquire, for the National Key Deer Refuge, lands in designated areas in Florida which he finds suitable for the conservation and management of key deer and other wildlife by exchange for any Federally owned property in Florida which he classifies as suitable for exchange or other disposal. The values of the property so exchanged shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor or to the Secretary as required.

§ 2244.4–6 Miscellaneous State exchanges.

Because of the infrequency of transactions involving State exchanges under the Acts of May 7, 1932 (47 Stat. 150), section 3 of the Act of June 14, 1934 (48 Stat. 962), Act of December 7, 1942 (56 Stat. 1042), and the Act of June 29, 1936 (49 Stat. 2026), regulations covering these transactions are not codified. Any such transaction will be handled in a manner consistent with the authorizing laws and with the regulations in § 2244.1.

§ 2244.5 Reclamation exchanges.

§ 2244.5–1 Applicable regulations.

(a) Regulations for exchange under the Act of August 13, 1953 (67 Stat. 566; 43 U.S.C. 451–451K), are in Part 406 of this title and for exchanges under the Act of May 25, 1926 (44 Stat. 648; 43 U.S.C. 423c), are in §§ 403.6–403.11 of this title.

(b) Applications for new entry under the provisions of the Act of March 4, 1915 (38 Stat. 1215; 43 U.S.C. 447), must be on the form provided for homestead applications, must refer to the serial number, and give the description of the former entry and a statement by the applicant showing the facts upon which he claims to come within the provisions of this act.

STEWART L. UDALL,
Secretary of the Interior.

JANUARY 27, 1968.

[F.R. Doc. 68–1267; Filed, Feb. 1, 1968; 8:46 a.m.]

This circular replaces Circulars 1845, 1973, 2036, 2047, 2067, 2083, 2113, 2181, and 2225; that portion of Circular 2110 relating to Parts 146, 148 and 149; and that portion of Circular 2220 relating to Subpart 2244.

GPO 841-161

Repl. by C-2258

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular No. 2240]

PART 3100—PUBLIC DOMAIN LEASING UNDER 1920 ACT

Subpart 3101—Lessees

PART 3120—OIL AND GAS

Subpart 3123—Noncompetitive Leases

QUALIFICATIONS FOR ASSOCIATIONS

Section 3101.1 is amended to read as follows:

§ 3101.1 Who may hold leases and permits.

Mineral prospecting permits and mineral leases may be issued only to (a) citizens of the United States; (b) associations of such citizens organized under the laws of the United States or of any State thereof, which are authorized to hold such interests by the statute under which organized and by the instrument establishing the association; (c) corporations organized under the laws of the United States or of any State thereof; or (d), in the case of coal, oil, oil shale, or gas, municipalities. A mineral lease or permit will not be issued to a minor, but oil and gas leases may be issued to legal guardians or trustees of minors in their behalf. As used in this group, "association" includes "partnership."

In § 3123.2 paragraphs (c) (1) and (f) are amended to read as follows:

§ 3123.2 What should accompany offer.

* * * * *

(c) (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see paragraph (f) (1) of this section), or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see paragraph (g) of this section), evidence of the authority of the attorney-in-fact or agent to sign the offer and lease, if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same land office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority is still in effect will be accepted.

* * * * *

(f) (1) If the offeror is an association which meets the requirements of § 3101.1 of this chapter, the offer shall be accompanied by a certified copy of its articles of association or partnership, together with a statement showing (i) that it is authorized to hold oil and gas leases; (ii) that the member or partner executing the lease is authorized to act on behalf of the association in such matters; and (iii) the names and addresses of all members owning or controlling more than 10 percent of the association. A separate statement from each person owning or controlling more than 10 percent of the association, setting forth his citizenship and holdings, shall also be furnished. Where such material has previously been filed, a reference by serial number to the record in which it has been filed, together with a statement as to any amendments, will be accepted.

(2) If the offer is made by an association which does not meet the requirements of § 3101.1 of this chapter, the same showing as to citizenship and holdings of its members shall be made as is required of an individual.

DAVID S. BLACK,
Acting Secretary of the Interior.

MARCH 7, 1968.

[F.R. Doc. 68-3056; Filed, Mar. 12, 1968; 8:47 a.m.]

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Circular Distribution List

GPO 842-048

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular No. 2241]

PART 1820—APPLICATION PROCEDURES

Subpart 1821—Execution and Filing of Forms

SIMULTANEOUS FILINGS

Section 1821.2–3 is amended to read as follows:

§ 1821.2–3 Simultaneous filings; determination of order of priority.

(a) Two or more documents are considered as simultaneously filed when:

(1) In accordance with the regulations in § 1821.2–2, they are delivered to and received by the proper office at the same time; or

(2) They are filed pursuant to an order which specifies that documents delivered to and received by the proper land office during a specified period shall be considered as simultaneously filed.

(b) Whenever it is necessary, for the purposes of the regulations in this chapter, to determine the order of priority of consideration among documents which have been simultaneously filed, such order of priority will be established by a drawing open to public view.

(c) Nothing in this regulation shall be construed as denying any preference right granted by applicable law or regulation or as validating any document which is invalid under applicable law or regulation.

STEWART L. UDALL,
Secretary of the Interior.

MARCH 29, 1968.

[F.R. Doc. 68–4096; Filed, Apr. 4, 1968; 8:47 a.m.]

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Circular Distribution List

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT
(2000)

[Circular No. 2242]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

APPLICATIONS AND GRANTS

1. Introductory paragraph (d)(1) of § 2234.1–2 is amended to read as follows:

§ 2234.1–2 Procedures.

* * * * *

(d) *Documents which must accompany application*—(1) *Maps.* Each application, other than a reservoir declaratory statement under § 2234.3–2(b)(1), or an appropriation for Federal-aid highway purposes under Title 23, United States Code, section 317, must be accompanied by a map prepared on tracing linen, or on tracing paper having a 100 percent rag content, and three or, in the case of electric transmission lines, five print copies thereof, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the following requirements:

* * * * *

2. Paragraph (b)(1)(a) of § 2234.2–4 is amended to read as follows:

§ 2234.2–4 Under Title 23, United States Code.

* * * * *

(b) *Application; grants.* (1)(*a*) Except where an application involves lands wholly within an Indian reservation, applications for rights-of-way and material sites under Title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, together with four copies of a durable and legible map shall be filed by the appropriate State highway department in the manner prescribed by § 2234.1–2(a). Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the requirements of § 2234.1–2(d)(1), paragraphs (i) through (viii). Applications for lands wholly within an Indian reservation shall be filed in the office of the superintendent of the Bureau of Indian Affairs agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

* * * * *

DAVID S. BLACK,
Acting Secretary of the Interior.

MAY 29, 1968.

[F.R. Doc. 68–6629; Filed, June 4, 1968; 8:50 a.m.]

Published in 33 F.R. 8339, June 5, 1968 - Effective upon publication.

Circular Distribution List

Repl. by C-2258

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT

[Circular 2243]

PART 3120—OIL AND GAS

Subpart 3123—Noncompetitive Leases

MISCELLANEOUS AMENDMENTS

1. Subparagraph (3) of § 3123.2(c) is amended to read:

§ 3123.2 What should accompany offer.

* * * * *

(c) * * *

(3) A signed statement by the offeror that he is the sole party in interest in the offer and the lease, if issued; if not he shall set forth the names of the other interested parties. If there are other parties interested in the offer a separate statement must be signed by them and by the offeror, setting forth the nature and extent of the interest of each in the offer, the nature of the agreement between them if oral, and a copy of such agreement if written. All interested parties must furnish evidence of their qualifications to hold such lease interest. Such separate statement and written agreement, if any, must be filed not later than 15 days after the filing of the lease offer. Failure to file the statement and written agreement within the time allowed will result in the cancellation of any lease that may have been issued pursuant to the offer. Upon execution of the lease the first year's rental will be earned and deposited in the U.S. Treasury and will not be returnable even though the lease is canceled.

* * * * *

§ 3123.9 [Amended]

2. The last sentence of § 3123.9(b) is revoked.

STEWART L. UDALL,
Secretary of the Interior.

JULY 12, 1968.

[F.R. Doc. 68-8575; Filed, July 18, 1968; 8:46 a.m.]

Published in 33 F.R. 10343, July 19, 1968 - Effective 30 days after publication.

Circular Distribution List

GPO 844-938

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular 2244]

PART 1850—HEARINGS PROCEDURES

Subpart 1850—Hearings Procedures; General

SUBPOENA POWER AND WITNESS PROVISIONS

In § 1850.0–7 paragraph (a) is amended and a new sentence is added to paragraph (b). As amended paragraphs (a) and (b) read as follows:

§ 1850.0–7 Subpoena power and witness provisions.

(a) *Compulsory attendance of witnesses.* The Field Commissioner or the examiner, as the case may be, is authorized to issue subpoenas directing the attendance of witnesses and the production of books, papers, documents, or other tangible things at hearings to be held before him or at the taking of depositions to be held before himself or other officers for the purpose of discovery or for use as evidence in the hearing or for both purposes. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the act of January 31, 1903 (43 U.S.C. 102–106), and 28 U.S.C. 1821. Subpoenas will be issued on a form approved by the Director.

(b) *Application for subpoena.* An application for a subpoena may be filed in the office of the Field Commissioner or the examiner before whom the hearing is to be held, in the office of the officer who made the decision appealed from, or in the office of the manager in which a complaint was filed, in which case the officer or manager will forward the application to the Field Commissioner or the examiner, as the case may be. Prior to the referral of a case to an examiner and upon certification by the manager that a complaint has been signed and is a matter of public record in his office, an examiner may upon proper showing and prior to the filing of an answer issue subpoenas as provided in paragraph (a) of this section.

* * * * *

STEWART L. UDALL,
Secretary of the Interior.

JULY 15, 1968.

[F.R. Doc. 68–8631; Filed, July 19, 1968; 8:46 a.m.]

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2245]

PART 3120—OIL AND GAS

Subpart 3120—Oil and Gas; General

ACREAGE LIMITATIONS

In § 3120.1–2, paragraph (e)(2) is amended to read as follows:

§ 3120.1–2 Acreage limitations.

* * * * *

(e) * * *

(2) Any person holding or controlling leases or interests in leases only, or applications or offers for leases only, or both leases or interest in leases and applications or offers or options or interests in options below the acreage limitation provided in this section, shall be subject to these rules:

(i) If he files an application or offer or option or interest in option which causes him to exceed the acreage limitation, that application or offer will be rejected.

(ii) For tracts not subject to the simultaneous filing procedures of § 3123.9, if he files a group of applications or options or offers or interests in options at the same time, any one of which causes him to exceed the acreage limitation, the entire group of applications, offers, options, or interests in options will be rejected.

(iii) If he files an offer for inclusion in the drawing procedures under § 3123.9, he shall be charged with the acreage thereof only if his offer is successfully drawn so that his offer has first priority. If that offer causes him to exceed the acreage limitation, the offer will be rejected. If he files at the same time a group of offers for tracts subject to the drawing procedures under § 3123.9, any offer which is successfully drawn after he reaches the acreage limitation shall be rejected.

(iv) An optionee is chargeable only for that acreage for which the optionor is chargeable.

STEWART L. UDALL,
Secretary of the Interior.

JULY 19, 1968.

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Circular Distribution List

GPO 845 - 112

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Circular Distribution List

CENTRAL FILE COPY

Circular No. 2246

GRAZING REGULATIONS for the PUBLIC LANDS

U.S. DEPARTMENT OF THE INTERIOR
Stewart L. Udall, Secretary

BUREAU OF LAND MANAGEMENT
Boyd L. Rasmussen, Director

September 1968

PREFACE

The regulations contained herein are applicable to the use, management, and protection of 178,000,000 acres public land administered under the authority and provisions of the Taylor Grazing Act of June 28, 1934, and the O&C Act of August 28, 1937, as amended and supplemented.

Part 4110, Grazing Administration (Inside Grazing Districts) is applicable to the 159,000,000 acres of grazing land administered by the Bureau of Land Management's 58 grazing districts. It provides the necessary regulations pursuant to Section 3 of the Taylor Grazing Act for intensive management of the public lands.

Part 4120, Grazing Administration (Outside Grazing Districts and exclusive of Alaska), provides regulations (pursuant to Section 15 of the Taylor Grazing Act and Section 4 of the O&C Act) for the use and management of the 19,000,000 acres of leased lands that have not been included within grazing districts.

Subpart 9239, Trespass - Grazing, provides grazing trespass regulations, including disciplinary actions resulting from the commitment of acts prohibited and violation of the rules of fair range practice.

Subpart 1853, Hearings Procedures - Grazing, provides regulations, within grazing districts, for the handling and processing of appeals.

These regulations now represent many modifications of the original regulations. Such amendments have been found necessary to meet more effectively the objectives of the Act by improving the orderly use of the land, preventing overgrazing and range depletion, and stabilizing the livestock industry dependent upon the public land.

This publication is a consolidation of the primary regulations used in the management of the public lands administered pursuant to the Taylor Grazing Act both inside and outside the statutory grazing districts and is intended to facilitate BLM operations.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER D—RANGE MANAGEMENT (4000)

Group 4100—Grazing Administration

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

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Subpart 4115—Records and Administrative Procedures

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Subpart 4110—Grazing Administration (Inside Grazing Districts); General

§ 4110.0–2 Objectives.

Grazing districts will be administered to conserve and regulate the public grazing lands, to stabilize the livestock industry dependent upon them, and in aid thereof to promote the proper use of the privately controlled lands and waters dependent upon those public grazing lands. In furtherance of these objectives, grazing privileges will be granted with a view to the protection of those livestock operations that are recognized as established and continuing and which normally involve the substantial use of the public range in a regular, continuing manner each year. To promote the highest use of the public lands within grazing districts which have been or hereafter are established, possession or control of sufficient land or water to insure a year-round operation for a certain number of livestock in connection with the use of the Federal range will be required of all users.

§ 4110.0–3 Authority.

(a) *Saving clause.* So far as practicable and consistent with the purposes and provisions of the act and the basic policy and plan of administration outlined in § 4110.0–2, the provisions of this Subpart 4110 will not be applied to the prejudice of the position of anyone who on the date of approval of this part was the holder of a grazing license or permit or who on that date had pending an application therefor.

§ 4110.0–5 Definitions.

Wherever used in rules, instructions, or interpretations issued by the Bureau of Land Management in or pursuant to the Federal Range Code for Grazing Districts (this part), unless the context otherwise requires:

(a) The "act" means the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269; 43 U.S.C. 315, 315a–315r), as amended and supplemented.

(b) "The Federal Range Code for Grazing Districts" means all of the rules and regulations pertaining to the administration of grazing districts.

(c) The "Secretary" means the Secretary of the Interior or his authorized agent.

(d) The "Director" means the Director of the Bureau of Land Management or his authorized agent.

(e) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(f) "Federal range" means land within established grazing districts administered by the Bureau of Land Management under the Federal Range Code for Grazing Districts (this part), including the vacant, unappropriated, and unreserved public land of the United States chiefly valuable for grazing and forage crops; State, county, and privately owned land leased for such administration; and lands so administered pursuant to a cooperative agreement with the Federal department or agency having jurisdiction over such land.

(g) "Property" means privately owned or controlled land or water used in range livestock operations.

(h) "Base property" means property used for the support of the livestock for which a grazing privilege is sought and on the basis of which the extent of a license or permit is computed.

(i) "Base property qualifications" means the maximum amount of grazing privileges on Federal range properly allowable to base properties in class 1 or class 2.

(j) "Forage land" means land the principal use of which is the production of natural or cultivated feed for livestock.

(k) (1) "Land dependent by use" means forage land other than Federal range of such character that the conduct of an economic livestock operation requires the use of the Federal range in connection with it and which, in the "priority period", was used as a part of an established, permanent, and continuing livestock operation for any two consecutive years or for any three years of such priority period in connection with substantially the same part of the public domain, now part of the Federal range. Such land may be (i) parallel land, i.e., land of the same character, interspersed with, and grazed at the same time as the Federal range on which grazing privileges may be granted, except in those grazing districts which by special rule have excluded parallel land as base property, (ii) land of different character than the Federal range and which properly supports the permitted livestock during all or part of the period that the Federal range is closed to grazing, or (iii) a combination of these two types of land. The priority period shall be the five-year period immediately preceding June 28, 1934, except that if such Federal range was placed within a grazing district after June 28, 1938, or added to an existing grazing district by boundary modification after the latter date, the priority period shall be the five years immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) No land shall be considered as dependent by use unless offered as base property in an application for a grazing license or permit within one year after the date when the Federal range used in creating the dependency by use first became a part of a grazing district, except that if the Federal range used in creating the dependency by use became a part of a grazing district prior to June 28, 1938, such base property shall not be considered as dependent by use unless offered in an application for a grazing license or permit filed prior to said date. Only the last set of base properties used during the priority period by a livestock operation can be invested with dependency by use by such operation.

(3) The extent to which grazing licenses or permits will be granted on the basis of dependency by use of land, shall be governed by the following:

(i) It shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of any two consecutive years or any three years in which use was actually made during the priority period, whichever is more favorable to the applicant, on that part of the public land which, at the time of the issuance of the license or permit, is Federal range.

(ii) It shall not exceed the amount of forage needed for the number of livestock creating such dependency by use that were customarily and properly sustained on the base property during the priority period and continue to use such property to the same extent, except that in no instance shall the use of base property be for less than the minimum period established under § 4111.2–1. The grazing privileges which may be granted hereunder shall not exceed the amounts determined under subdivision (i) or (ii) of this subparagraph, whichever is the lesser. Where the base property provides forage in excess of that necessary for the proper support of the number of livestock used in creating the dependency by use (class 1) the base property, to the extent of such excess forage capacity, may be treated as dependent by location (class 2) if so qualified.

(iii) Whenever the dependency by use of two or more base properties was created by the use of all or part of the same Federal range, during the same or at different seasons of the year, by two or more livestock operations, the relative dependency by use of each of the base properties shall be proportionate to the average annual use actually and properly made of the Federal range during the priority period by each of the livestock operations.

(l) "Land dependent by location" means forage land other than Federal range, which is so situated and of such character that it can properly be used as a base for an economic livestock operation utilizing the forage resources of the Federal range.

(m) "Animal-unit month" means the amount of natural or cultivated feed necessary for the sustenance of one cow or its equivalent, for a period of one month; as applied to Federal range, it means also the grazing privileges represented by the grazing of one cow or its equivalent for a period of one month. For the purposes of this definition, one cow shall be considered the equivalent of one horse or five sheep or five goats; provided, however, that only for the purposes of establishing fees for grazing privileges under § 4115.2–1(k)(2), the charge for one horse grazing on the Federal range for one month shall be at twice the rate charged for one cow grazing for the same period.

(n) "Grazing capacity" means the total animal-unit months of forage available from a tract or tracts of forage land during a given period.

(o) "Full-time water" means water which is suitable for consumption by livestock and available, accessible, and adequate for a certain number of livestock during those months in the year for which the range is classified as suitable for use. Such water may be from one source or may be the aggregate amount available from several sources.

(p)(1) "Prior water" is water which, during all or not less than two years of the priority period was used to service certain public domain now part of the Federal range for a livestock operation that was established, permanent, and continuing, and which normally involved the grazing of livestock on the same areas of public land for a certain portion or portions of the years of such use. For the purpose of this definition the priority period shall be the five-year period immediately preceding June 28, 1934, except that in any area placed within a grazing district or added to an existing district by boundary modification after September 23, 1942, the priority period shall be the five-year period immediately preceding the date of the order establishing such district or effecting such addition, as the case may be.

(2) Where a livestock operation used a water or waters during the priority period in such manner as would, in the absence of other factors, have served to invest such water with the attribute of priority, but such livestock operation subsequently ceased using such water or waters and used other water or waters in such manner as to invest them, too, with priority, only the latter water or waters shall be considered as prior, unless the former are also prior because of use by another livestock operation.

(3) No water shall be considered as prior unless offered as base property in an application for a grazing license or permit filed within one year after the public lands which were used in creating the priority first became a part of a grazing district except that when such lands became a part of a grazing district more than one year prior to March 16, 1942, a water shall not be considered as prior unless offered in an application filed prior to that date.

(4) The extent to which grazing privileges will be granted on the basis of the priority of water shall not exceed the average annual amount of forage customarily and properly utilized by the livestock operation computed on the basis of the years in which use was actually made during the priority period, on substantially that part of the public lands within the service area which, at the time of the issuance of the license or permit, is Federal range.

(q) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining such area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors will be considered.

(r) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (§ 4110.0–5 (k)(1)) or water (§ 4110.0–5 (p)(1)) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its substantiation in a decision by an examiner, the Director, or the Secretary upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

§ 4111.1 Qualifications of applicants.

§ 4111.1–1 Qualifications.

An applicant for a grazing license or permit is qualified if:

(a) He is engaged in the livestock business and is a citizen of the United States or has on file before a court of competent jurisdiction a valid declaration of intention to become a citizen or a valid petition for naturalization, or:

(b) It is a group, or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all the members of which are qualified under paragraph (a) of this section; provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or:

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised; provided that the articles of incorporation have been approved by the State Director.

§ 4111.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in base property by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding license or permit, or preclude the issuance or renewal of a license or permit, based on such property, for a period of two years after such acquisition. Upon the failure of such person to qualify within the two year period the license or permit will be subject to cancellation in accordance with § 4115.2–1(d).

§ 4111.2 Base property qualifications and classification.

§ 4111.2–1 Minimum requirements; classification of base properties.

(a) The District Manager, after recommendation by the advisory board, shall establish minimum base property requirements as a condition of qualification for the issuance of a license or permit in each district or unit thereof, taking into consideration the availability of base properties for proper use with and their relative dependence upon Federal range, land and water conditions, and other factors affecting livestock operations in the area according to customary use and best practices for good range management.

(b) The District Manager after recommendation by the advisory board will classify base properties as land or water and further in the following manner:

Class 1. Land dependent by use, or full-time prior water.

Class 2. Land dependent by location, or full-time water.

§ 4111.3 Adjudication and apportionment of grazing privileges.

§ 4111.3–1 Mandatory requirements; rating and classification of Federal Range.

(a) *Grazing capacity; seasons and maximum annual period of use.* The District Manager, after recommendation by the advisory board, will rate the grazing capacity of each unit or area in a grazing district and will classify each for the proper seasons of use and for the maximum period of time for which any licensee or permittee will be allowed to use the Federal range therein during any one year.

(b) *Wildlife; allowance for maintenance.* In each grazing district a sufficient grazing capacity of Federal range suitable for wildlife will be reserved by the District Manager after consulting with wildlife interests and the advisory board, for the maintenance of a reasonable number of wild game animals, to use the range in common with livestock grazing in the district.

(c) *Preference applicants.* Preference in the granting of grazing privileges will be given to those applicants within or near a district who are landowners engaged in a livestock business, bona fide occupants or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. When the demands of all such preference applicants cannot be satisfied, prior consideration will be given applicants in the manner specified in paragraph (d) of this section. Provision will be made for other applicants so far as Federal range remains available.

(d) *Order of preference.* Licenses or permits will be issued in the following order:

(1) *Free-use licenses.* A free-use license will be issued to any free-use applicant for grazing on Federal range in the immediate neighborhood of the applicant's residence for not to exceed the number of livestock owned and kept by him for domestic purposes, that is, livestock whose products are consumed or whose work is directly and exclusively used by the family of the applicant, provided the free-use applicant has adequate facilities for the proper care and maintenance of such domestic livestock on the Federal range.

(2) *Regular licenses and permits; number of livestock.* Regular licenses and permits will be issued to qualified applicants to the extent that Federal range is available in the following preference order and amounts:

(i) To applicants owning or controlling land in class 1, licenses or permits to the extent of the dependency by use of such land; to applicants owning or controlling water in class 1, licenses or permits to the extent of the priority of such water.

(ii) To applicants owning or controlling land or water in class 2, licenses or permits for the number of livestock for which range is available and which can

be properly grazed in connection with a livestock operation which involves the use of such land or water.

§ 4111.3–2 Procedures.

(a) *Unit-wide or area-wide adjudication.* (1) The District Manager, after recommendation by the advisory board, may make a simultaneous classification under § 4111.2–1 of all offered base properties within a single administrative unit or grazing area and may allocate in a single action the available Federal range within the unit or area upon which such base properties are dependent.

(2) The District Manager shall give written notice by certified mail of such classification and allocation to the persons offering such base properties, naming a place and date not less than 30 days thereafter to file protest to the advisory board, in accordance with § 4115.2–1(b). Thereafter, and provided there is then pending a valid application for grazing privileges, the District Manager will render his final decision thereon and will allow the right of appeal to the examiner in accordance with § 4115.2–3.

(b) *Permits; annual licenses.* Grazing permits may be issued as soon as the necessary data can be obtained or after agreements as to the extent of their individual grazing privileges have been reached by the interested applicants and such agreements have been reduced to writing; a recommendation thereon made by the advisory board, and approval thereof given by the District Manager. No such agreement will be approved unless it appears that it is fair and that it represents a substantial compliance with the provisions of the grazing regulations for grazing districts, and no applicant shall be prejudiced by his failure or refusal to enter into such an agreement. The practice of issuing an annual license will be continued until such time as a permit is issued. Upon the issuance of a permit any outstanding license or part thereof which has been granted on the same qualifications on which the permit is based will terminate. Upon expiration of a term permit an annual license may be issued, pending issuance of a new term permit.

(c) *Allotments.* Allotments of Federal range will be made to licensees or permittees when conditions warrant. Division of the range by agreement or former practice will be followed where practicable, provided such division is in substantial conformity with the qualifications for grazing privileges of the respective applicants and the agreement is reduced to writing and approved by the District Manager.

(d) *Administration of lands additionally available; preference right for lands restored from withdrawal.* (1) Any land within the exterior boundaries of a grazing district made available for administration by the Bureau of Land Management, by a lease under the Pierce Act of June 23, 1938 (52 Stat. 1033; 43 U.S.C. 315M–1—315M–4), by the revocation of a withdrawal, or by the cancellation or relinquishment of a homestead entry or claim, or otherwise, after the grazing privileges in the area embracing the land have been adjudicated, will be administered in accordance with customary use so far as such administration may be practicable and consistent with good range management.

(2) Where public lands are restored from withdrawal and the District Manager determines that the lands are available for grazing use, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the lands immediately prior to their restoration, shall have a superior preference to the further grazing use of such lands. The preference right must be asserted and an application for license or permit, on a form approved by the Director obtainable from the District Manager must be filed with that officer not more than 90 days after the date of signing of the order of revocation of the withdrawal, or not more than 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior lease, license, permit or other authority upon which the preference claim is based. The District Manager may issue to such applicant an annual license or a term permit as he shall determine, authorizing such grazing use subject to the applicable regulations in this part. (Sec. 1, act of May 28, 1954 (68 Stat. 151), as interpreted and applied to sec. 3, Taylor Grazing Act. 43 U.S.C., 1952 ed., sec. 315(h).)

§ 4111.4 Adjustments of grazing privileges.

§ 4111.4–2 Increases.

Increases in grazing capacity, when conditions warrant, and after recommendation of the advisory board and approval of the District Manager, will be apportioned in a manner that will assist in the stabilization of livestock operations controlling qualified base property, with emphasis being given to the restoration of reductions that have been imposed to reach the grazing capacity of a particular allotment or range

area, and to allocation of increased grazing capacity to operators or interests whose efforts were responsible for such increases.

§ 4111.4–3 Reductions.

(a) Downward adjustments will be imposed in the following order:

(1) Nonrenewable licenses.

(2) Regular licenses or permits to the extent, if any, to which they have been issued in excess of the base property qualifications or have otherwise been improperly issued.

(3) Regular licenses or permits properly issued, on an equal percentage basis.

(b) Base property qualifications will be adjusted, after licenses or permits have been issued, to the extent that such base property qualifications exceed the long-term forage production potential of any area of Federal range. Adjustments required below the forage production potential of any area of Federal range, after licenses or permits have been issued, to balance authorized use with the proper stocking rate of the Federal range, will be apportioned equitably or as agreed to among the qualified licensees or permittees and the District Manager after recommendation by the district advisory board. Such adjustments may be made either by authorizing less livestock or less time or by both methods as determined by the District Manager.

(c) When the District Manager determines that the forage production potential, with improvements, of the Federal range area is significantly greater than the present allowable stocking rate, he will issue combination active use and suspended nonuse licenses or permits for not to exceed the forage production potential, except that at his option, and after obtaining advice from the district advisory board, he may apply paragraph 2(d) of this section in making the adjustment. The difference between the forage production potential and the present allowable stocking rate of the Federal range area will be held in a suspense status, provided that the aggregate of authorized active use and "suspended nonuse" shall not exceed the base property qualifications of any licensee or permittee.

(d) When the District Manager, after recommendation by the district advisory board, determines that the imposition of the full amount of downward adjustment in authorized active use necessary to reach the proper stocking rate of a Federal range area would impose a serious hardship on the range users, he is not required to impose the full amount of the adjustment forthwith, but will schedule a percentage of the required adjustment during each of the three years immediately following the District Manager's determination as the circumstances in each case may warrant, except that when the total adjustment is less than 15 percent of the total authorized active use, it will be imposed forthwith in the full amount.

(e) The District Manager will notify each affected licensee or permittee by certified mail of his decision to make an adjustment in authorized active use to reach the proper stocking rate of any Federal range area and of the manner in which the adjustment is to be made. The District Manager's decision will allow 30 days from receipt thereof in which the licensee or permittee may file an appeal in accordance with § 4115.2–3 and § 1853.1 of this chapter. If no appeal is filed within the 30-day period, the adjustment will be in accordance with the District Manager's decision and no further appeal will be allowed even though the adjustment may be scheduled under paragraph 2(d) of this section. If any timely appeal is filed, after receipt of the District Manager's decision notice, the adjustment for the entire area of Federal range under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the ultimate decision will be applied to its full extent for the next grazing season immediately following the effective date of that decision. If, however, the final decision on the appeal is rendered within the 3-year adjustment period established by the District Manager's decision notice, the required adjustment may be apportioned over the remaining portion of that period. In the event that the orderly administration of the Federal range or other public interest so requires, any decision may be placed in full force and effect in accordance with the provisions of §1853.8(b) of this chapter.

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Subpart 2411 of this chapter, and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Parts 1840 and 1850 of this chapter.

Subpart 4112—Management Practices

§ 4112.2 Designation of ranges for particular kinds of livestock.

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

§ 4112.3 General rules of the range.

§ 4112.3–1 Acts prohibited.

The following acts are prohibited on the Federal range:

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across the Federal range, including stock driveways, without an appropriate license or permit, regular or free-use, or a crossing permit.

(b) Grazing livestock upon or driving livestock across the Federal range, including stock driveway, in violation of the terms of a license or a permit, either by exceeding the number of livestock permitted, or by allowing livestock to be on the Federal range in an area or at a time different from that designated, or in any other manner.

(c) Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.

(d) Destroying, molesting, disturbing, or injuring property used or acquired for use by the United States in the administration of Federal range, including stock driveways, or improvements constructed or maintained under section 4 of the act.

(e) Cutting, burning, or removing vegetative cover, brush, woodland growth, or timber for any purpose, except as authorized by law. Permits to carry on controlled burning of vegetative cover or brush may be issued by the District Manager in proper cases, subject to such conditions as he may impose, and to all State laws and regulations concerning such burning.

(f) Molesting or driving from the Federal range without authority livestock lawfully grazing thereon under license or permit.

(g) Interference with licensed hunters or fishermen to enter, and hunt and fish on the Federal range covered by such license or permit; or with the entrance of miners, prospectors and mineral lessees of the United States to prospect, locate, develop, mine or patent the mineral resources on such Federal range; or with other persons entitled to enter such range for lawful purposes.

§ 4112.3–2 Rules of fair range practice.

All licensees and permittees shall comply with the following rules of fair range practice:

(a) The statutory provisions of the State in which the Federal range or stock driveway to be used is located relating to the branding of livestock and sanitary requirements shall be followed.

(b) A crossing permittee shall follow the route prescribed in the crossing permit at an average rate of not less than five miles per day for sheep or goats and ten miles per day for cattle or horses, but an increased or decreased rate of travel may be prescribed in the discretion of the District Manager.

(c) All licensees and permittees shall provide adequate salt on the range for their licensed or permitted livestock, and shall bed sheep and goats according to instructions issued by the District Manager. Upon request by the majority of the users of any community allotment of Federal range, the District Manager may prescribe the time for, breed, grade, and number of bulls to be turned into such allotment; in the absence of such express requirements the provisions of State law on the subject shall be applicable.

(d) When so requested by the State Director or District Manager, the licensee or permittee shall join with the Bureau of Land Management in preparing a fire plan which shall set forth in detail the program for prevention, control, and extinguishment of fires, including the responsibility of the licensee or permittee for action on his range allotment and on adjacent Federal range.

Subpart 4113—Supervision and Inspection

§ 4113.1 Procedure for enforcement of rules and regulations.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule. (Refer to § 9239.3–2 of this chapter for detailed enforcement procedures.)

Subpart 4114—Advisory Boards and Local Associations

§ 4114.1 Grazing district advisory boards.

§ 4114.1–1 Authorization for establishment; number of members; qualifications.

The State Director shall fix the number of members to be recommended by election for appointment to the advisory board in each district, such number to be not less than five nor more than twelve, exclusive of a wildlife representative who will not be recommended by election, but shall be selected directly by the State Director. The State Director may fix the number of district advisers to be recommended by election as representatives of each class of stockman, according to the kind of livestock owned, or may fix the number to be recommended by election from each voting precinct, or both, provided that the free-use licensees in each district shall be entitled to recommend one representative who shall be a free-use licensee. All district advisers, except the wildlife representative, shall be electors qualified to vote in the particular election. If a district is divided into precincts, an adviser representing a precinct shall qualify in the precinct in the same manner as in the district.

§ 4114.1–2 Election, time and place; the general procedures.

All district advisers, except wildlife representatives, shall be recommended by election in the manner provided in this section, and in the General Procedures for Grazing District Advisory Board Elections as approved by the Director, Bureau of Land Management, and published in the FEDERAL REGISTER. An election to recommend district advisers for appointments for each grazing district will be held within 90 days after the publication in the FEDERAL REGISTER of the order establishing the grazing district. Persons recommended by election for appointment at the first election after establishment of a grazing district, or at the first election during the 1964 calendar year, may be recommended for appointment and annual reappointment for a maximum period of three consecutive years; or the District Manager may divide the group, by lot, as evenly as possible into three groups to be considered as being recommended for appointment or reappointment for one year, two consecutive years, or three consecutive years respectively. Thereafter, elections will be held annually, for each group whose term of recommendation for appointment has expired, in accordance with the options set forth in the General Procedures for Grazing District Advisory Board Elections.

§ 4114.1–3 Appointment; term of office; removal; vacancies.

A person recommended by election for appointment as district adviser shall assume office only after he has been appointed by the State Director and has taken the oath of office. The State Director may, in his discretion, appoint those in group 1 for a period not to exceed 365 days; those in group 2 for an initial period of 365 days and thereafter a subsequent like period; and those in group three for an initial period of 365 days and thereafter two successive like periods. The State Director may remove any district adviser from office because of failure to discharge his duties, loss of any of his qualifications to hold the office, or in the public interest. Upon a vacancy occurring in the office of the district adviser other than a wildlife representative by reason of resignation, removal, disqualification, or otherwise, the board shall recommend the name of a person to fill the vacancy and such recommendation, together with that of the District Manager, shall be transmitted to the State Director for consideration. A person selected to fill a vacancy shall be appointed for the remainder of the unexpired 365-day period, after which a person shall be recommended by election for the balance of the period of recommendation at the next regular election. The wildlife representative will be appointed by the State Director for a term of office that does not exceed 365 days.

§ 4114.1–4 Meetings; organization.

District advisory boards shall meet at any time and place within or near the district designated by the State Director or his authorized representative. At the first meeting of the board after an election, it shall organize by electing one of its members as chairman and such other officers from its membership as it may deem necessary. Meetings of a district advisory board shall be open to the public except that, with the approval of the Bureau representative present, it may meet in executive session to consider applications for the granting of licenses or permits or any other business.

§ 4114.1–5 Functions and duties of district advisers; limitations.

District advisers shall advise or make recommendations on the following matters:

(a) The qualifications, classification, and requirements of base property.

(b) The transfer and relinquishment of base property qualifications.

(c) The grazing capacity of the Federal range in the district.

(d) Application for all types of grazing licenses or permits, including nonuse, or extension of use: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(e) Cancellation of grazing licenses or permits when related to: failure to use base property, loss of all or part of lands used in year-round operation, range depletion, failure to offer base property or to validate a license or permit, or failure to use grazing privileges.

(f) Agreements as to the extent of individual grazing privileges, when such agreements have been reduced to writing and found to be equitable and in substantial compliance with the provisions of this part.

(g) Variance in range improvement fees in accordance with the character and requirements of the district or portions thereof.

(h) Requirements for unit or allotment boundary fences and apportionment of costs between the benefiting licensees or permittees.

(i) Proper rules of fair range practice.

(j) Allotments of range by classes of livestock or for community or individual use.

(k) Seasonal use of the Federal range or any part thereof.

(l) Cooperative agreements or application for the construction or maintenance of improvements on the Federal range under section 4 of the act and assignments thereof.

(m) Work plans under the range improvement, weed control or soil and moisture conservation programs.

(n) Any recommendations made by local associations of stockmen in the district.

(o) Reservations of grazing capacity of Federal range for wild game animals, including any agreements in connection therewith proposed for execution with State or Federal wildlife agencies.

(p) Special rules for the district, within meaning of § 4115.2–4.

(q) Any other matter which they may desire to bring to the attention of the Director, or on which their advice may be requested.

§ 4114.2 State advisory boards.

§ 4114.2–1 Membership and meetings.

The livestock members of each grazing district advisory board shall select from their number at the first meeting of the board after each election, two members and two alternates to serve on a State advisory board for the State in which the district is located; where the district advisory board has representation for cattle and horses, and sheep and goats, then only one representative and one alternate representing each class shall be selected. The wildlife members of the advisory boards within each State will select one of their number and one alternate to serve as a wildlife member on the State advisory board. In addition, the State advisory board will have one or more additional members, but not exceeding seven, who will represent other interests such as forestry, minerals, soil conservation, outdoor recreation, urban and suburban development, county government, and State government. Such additional members and their alternates will be selected by the State Director from nominations made by State or local government officers or organizations reflecting nonlivestock interests in the management or disposition of public lands. The time and place for meetings of the State advisory board shall be set by the State Director. The board shall select from its members one member to be chairman of the board. The co-chairman of the board shall be the State Director.

§ 4114.2–2 Functions and duties.

The State advisory boards shall consider and make recommendations on grazing, wildlife, forestry, outdoor recreation, minerals, soil conservation, urban and suburban development, and other resource administration policies or problems affecting the State as a whole. The operations of the State boards, including their meetings shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.3 National Advisory Board Council.

§ 4114.3–1 Membership and meetings.

The livestock members of each State advisory board shall select from their number, at its first meeting of each new term, one member and one alternate representing cattle and horses, and one member and one alternate representing sheep and goats, to serve on the National Advisory Board Council. The elected wildlife member or his alternate on each State advisory board will serve on the National Advisory Board Council representing wildlife interests. The State Director from each of the ten Western

States with organized grazing districts shall submit a list of nominees, selected from the nonlivestock and nonwildlife membership on the State board. From this list, and other sources as he may determine, the Secretary of the Interior or his authorized representative shall appoint members, not exceeding ten in number, to the National Advisory Board Council to represent nonlivestock and nonwildlife interests. In addition to the above membership, one member from each of the States of Alaska and Washington will be appointed by the Secretary of the Interior or his authorized representative from a list submitted by the respective State Directors pursuant to nominations made by State or local government officers or organizations reflecting interests in grazing or other uses of public lands. The Council shall select from its members one member to be chairman of the Council. The cochairman of the Council shall be an official of the Department of the Interior appointed by the Secretary of the Interior who shall set the time and place for such meetings of the National Advisory Board Council.

§ 4114.3–2 Functions and duties.

The National Advisory Board Council shall consider and make recommendations on policies and problems of a national scope related to all natural resource use and management. The operations of the National Council, including their meetings, shall conform to the committee management requirements of the Secretary of the Interior as set forth in the Departmental Manual.

§ 4114.4 Local associations of stockmen.

§ 4114.4–1 Organization.

Qualified applicants for grazing licenses or permits in any grazing district may organize a local association, or several associations, according to classes of livestock, or by community of interest or otherwise.

§ 4114.4–2 Articles of incorporation; constitutions; by-laws.

Such associations shall be organized as corporations "not-for-profit", if permissible under the laws of the State in which the grazing district, or the greater part thereof, is situated; or they may be organized as cooperative unincorporated associations. In either case the articles of incorporation, the charters, or the constitutions of such associations shall be submitted to the State Director for approval before the association may be recognized by the Bureau. The by-laws of such associations need not be submitted but in any instance which they are in conflict with the provisions of this part or the terms of any license, permit, or cooperative agreement issued to or made with an association, the latter shall prevail.

§ 4114.4–3 Powers.

Such local association shall be authorized to exercise one or more of the following powers, to be specifically set forth in the articles of incorporation, charter, or constitution, as the case may be, of such association:

(a) To make contributions in cash, property, material or labor toward the administration, protection, and improvement of the Federal range lying within the district.

(b) To construct and maintain fences, wells, reservoirs, and other improvements necessary to the care and management of the livestock grazed in the district under permit issued by the Bureau.

(c) To act in an advisory capacity in the administration of the Federal range lying within the district.

(d) To recommend the amount, manner of apportionment, time, and method of collection of assessments for strictly association purposes, as well as for the public purposes, contemplated by the act.

(e) To enter into cooperative agreement for any of the foregoing purposes or for any other purposes authorized by the act. In addition, the association's powers may include, among others, the power to lease or otherwise acquire the control of State, county, privately owned, tax default, or other lands within or near a district.

§ 4114.4–4 Cooperative agreements for use of lands; obligation of licensees and permittees to share cost.

Whenever the grazing capacity of Federal range is increased whether by reason of the acquisition of control of any lands by the Bureau or otherwise, through a cooperative agreement with a local association, any licensee or permittee benefiting thereby, whether a member of the association or not, shall pay to the association his proportionate share of the cost of the association lands and of the cost of installation, development, and maintenance of range improvements, including reseeding, plus any authorized association assessments for other expenses. Such share shall be determined by the District Manager after consideration of the recommendation of the association. The District Manager may refuse to issue a license or permit to any applicant or may cancel or refuse to renew the license or permit of any licensee or permittee to graze on any lands covered by such agreement, whether public or association lands, and whether or not such applicant, licensee, or permittee is a member of the association, if he fails or refuses to pay to the association any of the foregoing charges.

Subpart 4115—Records and Administrative Procedures

§ 4115.2 Procedures.

§ 4115.2–1 License and permit procedures; requirements and conditions.

(a) *Filing and consideration of applications; interdistrict agreements; recommendations; service of notice.* (1) Each year a date will be set by the District Manager prior to which all applications for grazing licenses or permits in the district must be filed in his office; applications filed on or after such date may be rejected for that year unless satisfactory justification for the belated filing is shown.

(2) All applications for grazing licenses or permits will first be presented to the district advisory board for advice and recommendation: *Provided,* That in no case shall any district adviser participate in any advice or recommendation concerning a permit, or an application therefor, in which he is directly or indirectly interested.

(3) Where a grazing area or unit is located in one district, but is administered by the District Manager of an adjacent district pursuant to a formal interdistrict agreement, applications for grazing licenses or permits on such area or unit shall be filed with the District Manager of the adjacent district. The advisory board of the district in which the land is actually located may designate one or more of its members, on its behalf, in cooperation with the advisory board of the adjacent district, to make appropriate recommendations to the District Manager of the adjacent district with respect to such applications.

(4) The advisory board will make its recommendation to the District Manager and, if such recommendation is to any extent adverse, it shall set forth the reasons therefor. If such recommendation is favorable and the District Manager approves, he will notify the applicant by ordinary mail, which notice may be the fee billing. If the advisory board recommendation is favorable but the District Manager disagrees, notice will be served on the applicant in person or by certified mail sent to his address of record, setting forth the recommendation of the advisory board and the Manager's disapproval, together with the reason or reasons for a prospective adverse decision, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a date, not less than ten days thereafter, on or before which oral or written protest may be presented to the District Manager. If the recommendation of the board is to any extent adverse, notice will be served on the applicant in person or by certified mail sent to his address of record, setting out the reason or reasons given by the advisory board for the adverse recommendation, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts in which the application is deficient, and naming a place and date, not less than ten days thereafter, when protest against the recommendation will be heard. The District Manager may also serve notice on any other applicant or applicants who may be directly affected by the adoption of the advisory board recommendation or the prospective decision of the Manager which will allow an appropriate protest. In any case where consideration of an application involves only issues previously adjudicated involving the same applicant or his predecessors in interest, the same base property and the same area of use, the advisory board may recommend that a protest meeting not be held, whereupon the District Manager may accept the recommendation of the board as its final consideration.

(b) *Protests; reconsideration by advisory boards; service of notice.* At the time and place fixed for the protest meeting, any licensee, permittee, or applicant may appear, in person or by attorney or other representative, or may file a written protest with the advisory board, which thereupon will reconsider its previous recommendation in the light of the protest and will make a final recommendation to the District Manager. If such recommendation is favorable to the protestant, and the District Manager approves, he will notify the protestant thereof by ordinary mail, which notice may be the fee billing. If the recommendation is to any extent adverse, and the District Manager approves, a notice giving the reason or reasons therefor will be served on the protestant in person or by certified mail, including a reference to the pertinent sections or provisions of the Federal Range Code for Grazing Districts that serve as controlling factors. Such notice will constitute the District Manager's final decision for purposes of appeal.

(c) *Allowance or rejection of application; modification; service of notice.* The District Manager, in the light of all facts and circumstances and after reference to the advisory board, may issue or refuse to issue a grazing license or permit. When the District Manager takes an adverse action on any application, a notice including a recital of the specific reasons for the action taken will be served on the applicant in person or by certified mail. The notice will advise the applicant of his privilege to appeal to an examiner.

(d) *Cancellation or reduction of licenses or permits; show cause; appeal to examiner.* Licenses or permits are subject to cancellation or reduction to the extent that they have been improperly issued, or to the extent that their continued effectiveness is adversely affected pursuant to any of the provisions of §§ 4111.1, 4115.2–1(e), 4115.2–1(k)(4), 4114.4–4 or 4115.2–5(a)(6). Except as otherwise specifically provided, in any

such case or in any case in which it shall appear that a license or permit confers grazing privileges in excess of those properly allowable under this part, the District Manager will notify the licensee or permittee that the license or permit is thereby held for cancellation or reduction either in whole or in part, as the case may be, and that the licensee or permittee will be allowed fifteen days from receipt of notice within which to show cause why such action should not be made final. Such notice will set forth fully the reasons for the proposed action, specifically referring to the pertinent provisions of this part, and will be served on the licensee or permittee by certified mail or in person. In case of failure of the licensee or permittee to show cause within the time allowed, the license or permit will be canceled or reduced to the extent indicated in the notice. The District Manager will consider any cause shown and, if satisfied of its sufficiency, will close the case; if not satisfied as to its sufficiency, or if no cause is shown, he will notify the licensee or permittee in person or by certified mail that the cancellation or reduction will become final unless an appeal to the examiner is filed in accordance with § 4115.2–3.

(e) *Terms and conditions.* The issuance and continued effectiveness of all regular licenses and permits will be subject to the following terms and conditions:

(1) The possession or control by the applicant, licensee, or permittee, of feed and forage supplies adequate, with the authorized Federal range use, to support his licensed or permitted livestock for a full year-round operation.

(2) No license or permit will provide for the grazing livestock on the Federal range during that part or parts of the year for which the Federal range has not been classified as proper for use.

(3) No license or permit will confer grazing privileges in excess of the grazing capacity of the Federal range to be used, as determined by the District Manager, except as may be allowed under § 4111.4–2 (c) and (d).

(4) So far as consistent with proper range practices, licenses and permits will confer grazing privileges on the range lands which were used in creating the dependency by use or priority of the base properties involved.

(5) In the event of range depletion resulting from drought or other causes, the grazing privileges that may be exercised under any license or permit may be reduced in whole or in part, and for such period of time as may be necessary.

(6) Upon the diminution of the Federal range to be used under any license or permit due to withdrawal, appropriation, selection, or otherwise, the license or permit may be reduced proportionately to the reduction in available grazing capacity caused by the loss of such Federal range.

(7) If a licensee or permittee for two consecutive years ceases to make substantial use of his base property in connection with his year-round livestock operation, the authorized use under such license or permit and the qualifications of the base property may be subject to reduction in proportion to the diminished use of the base property.

(8) If a licensee or permittee loses ownership or control of:

(i) All or part of his base property, the license or permit, to the extent it was based upon such lost property, shall terminate immediately without further notice from the District Manager; except that, if the licensee or permittee notifies the District Manager, in writing, of such loss within thirty days from the date thereof, such license or permit shall terminate to that extent at the end of the grazing season or grazing year as the District Manager shall determine; or

(ii) All or part of such other lands or grazing privileges as are necessary to his year-round operation, the license or permit will be subject to reduction in proportion to the loss of such necessary lands or grazing privileges unless the licensee or permittee notifies the District Manager within 30 days after such loss and thereafter within the time allowed by the District Manager after recommendation by the advisory board acquires ownership or control of other lands or grazing privileges sufficient to assure a year-round operation.

(9) Base property qualifications, in whole or in part, will be lost upon the failure for any two consecutive years:

(i) To include in an application for a license or permit or renewal thereof, the entire base property qualifications for active, nonuse, or combination of active and nonuse, except where the base property qualifications are included in an outstanding current term permit, or where the allowable use has been reduced under §§ 4111.4–3 (a)(3) and (c), and 9239.3–2(e) of this chapter.

(ii) To accept a license or permit issued pursuant to such application.

(10) The failure for any two consecutive years to make substantial use as determined by the District Manager, after reference to the advisory board, of all or part of the grazing privileges authorized under a license or permit, may result in the revocation thereof and in the proportionate loss of the base property qualifications.

(11) Nonuse, in whole or in part, of grazing privileges under a license or permit may be authorized by the District Manager, upon application by the licensee or permittee, after reference to the advisory board, for the following reasons: conservation and protection of the Federal range, annual fluctuations in livestock operations, or financial or other reasons beyond the control of the licensee or permittee.

(12) A revocation of a license or permit in whole or in part may result in a

proportionate loss of the base property qualifications supporting such license or permit.

(13) (i) No readjudication of any license or permit, including free use license, will be made on the claim of any applicant or intervener with respect to the qualifications of the base property, or as to the livestock numbers or seasons of use of the Federal range allotment where such qualifications or such allotment has been recognized and license or permit has issued for a period of three consecutive years or more, immediately preceding such claim.

(ii) The Bureau of Land Management may make adjustments in licenses and permits at any time when necessary to comply with the Federal Range Code for Grazing Districts.

(14) Where Federal range is allotted for the exclusive grazing use of one or more users, the District Manager, if the proper use or orderly administration of the range makes it necessary:

(i) May require the licensee(s) or permittee(s), as a condition to the granting and continued effectiveness of grazing licenses or permits, to fence or to contribute an equitable share to the cost of fencing the allotted areas, and of maintenance of such fences;

(ii) May require any licensee or permittee who will benefit in some substantial measure from such fence construction, as a condition to the renewal of an existing license or permit, likewise to pay or to reimburse an equitable share of the cost of such fence construction and maintenance. The amount of such share may be established by agreement of the parties, or, upon their failure to agree, by determination of the District Manager.

(iii) May take necessary action to enforce the requirements under subdivisions (i) and (ii) of this subparagraph, in accordance with the provisions of paragraph (d) of this section.

(f) *Interest of Member of Congress prohibited.* No Member of or Delegate to Congress shall be admitted to any share or part of any license or permit issued under the act, or to derive any benefit to arise therefrom. (41 U.S.C. sec. 22; 18 U.S.C. secs. 431–433.)

(g) *Change in grazing seasons.* Any licensee or permittee who desires to use the Federal range for a period or periods other than as authorized by his license or permit may, upon written approval of the District Manager, be allowed to use the amount of his authorized grazing privileges during any period of time for which the Federal range is classified as proper for use, provided:

(1) The total of such use does not exceed the maximum amount of time for which any licensee or permittee is allowed to use the Federal range during any one grazing year;

(2) The number of animal-unit months of Federal range to be utilized is not thereby increased;

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

(h) *Exchange-of-use agreements.* Exchange-of-use agreements may be issued to any applicant having ownership or control of non-Federal land interspersed and normally grazed in conjunction with the surrounding Federal range for not to exceed the grazing capacity of such non-Federal land, without payment of grazing fees, provided that during the term of the agreement the Bureau shall have the management and control of such non-Federal land for grazing purposes.

(i) *Nonrenewable licenses.* Nonrenewable licenses may be issued to nonpreference applicants only for the period specified by the District Manager and for the number of livestock for which range is temporarily available and which can be properly grazed without detriment to the operations on the range of applicants owning or controlling base properties in class 1 and class 2.

(j) *Suspension of licenses and permits under Soldiers' and Sailors' Civil Relief Act of 1940.* Any licensee or permittee who enters military service, as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (54 Stat. 1179; 50 U.S.C. App. 511(1)), may elect at the beginning of or at any time during the period of such service to suspend his license or permit, in whole or in part, for such period and six months thereafter, subject to the following:

(1) The licensee or permittee shall file with the District Manager an application, in duplicate, setting forth the facts and circumstances upon which the application for suspension of the license or permit is based. If the applicant desires the suspension of a license or permit in more than one district, a separate application shall be filed with the District Manager for each district.

(2) Upon the approval of the application the suspension shall be effective for the period involved, unless sooner terminated upon further application to the District Manager by the licensee or permittee, and no operations under the license or permit to the extent suspended shall be conducted during such period.

(3) No grazing fees will be assessed under a license or permit to the extent and during the period it is suspended and, upon the approval of an application for suspension, any fees that have been paid for the period of suspension will be refunded and any fees that are or may become due for such period will be remitted.

(4) A special temporary license, to the extent of any grazing privileges suspended, may be issued to another applicant for not to exceed the period of such suspension, but upon the termination of the suspension, either by reason of the

expiration of the six months' period following the conclusion of the first licensee's or permittee's military service or by reason of an application by the first licensee or permittee for an earlier termination, or otherwise, such temporary license shall terminate as of the beginning of the grazing period next following the termination of the suspension.

(5) No suspension granted hereunder shall entitle a licensee or permittee to any greater privileges subsequently than those to which he would have been entitled in the absence of a suspension.

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Director, and from the Director to the Secretary of the Interior, in accordance with the rules of practice, Part 1850 of this chapter.

(k) *Fees for grazing licenses and permits*—(1) *Free-use licenses.* No fee will be charged for the issuance of a free-use license.

(2) *Licenses and permits; rates.* (i) Each regular licensee or permittee, and holder of a nonrenewable license will be charged fees, consisting of a grazing fee for use of the range and a range improvement fee, for the animal unit months authorized by the license or permit, at a rate per animal unit month. All billing shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock 6 months of age or over allowed on the Federal range will be considered at any point of time during the grazing period as a part of the total number for which a license or permit has been issued. No fees will be charged for livestock under 6 months of age. Range improvement fees may vary in accordance with the character or requirements of the various districts or portions thereof. Grazing fees may differ in any district or unit thereof in which the grazing capacity of the Federal range is increased by reason of the addition of land not owned by the United States, or by reason of a cooperative agreement or memorandum of understanding between the Bureau of Land Management, and any State or Federal agency, or any person, association, or corporation. A minimum annual charge of $10 will be made on all regular licenses or permits, and nonrenewable licenses.

(ii) (*a*) The fee or fees for any fee year, beginning on March 1, will be established by the Secretary at a rate which is equivalent to a specified percentage, to be fixed by the Secretary, of the average of the prices per pound of beef and lamb, rounded to the nearest whole cent, which was paid to growers during the preceding calendar year in the markets of the 11 Western States, as determined by the Secretary based upon market prices as reported by the Department of Agriculture.

(*b*) The fee for any fee year may be changed by the Secretary from that of the preceding year by fixing a new specified percentage of the average of the prices per pound of beef and lamb. The fee for any fee year shall, in any event, be adjusted by the Secretary, in addition to any percentage adjustment that may be made, to conform to changes in market price conditions whenever in the preceding calendar year there is a change in the average of such prices, rounded off to the nearest whole cent, of 2 cents or more above or below the corresponding average for the preceding year.

(*c*) The fee or fees established by the Secretary for any fee year, including announcement of the portion thereof to be credited to the range improvement fund, will be published as a notice in the FEDERAL REGISTER. All regular billings shall be issued in accordance with the rate or rates prescribed in the notice.

(3) *Crossing permits.* Upon application filed with the District Manager by any person showing the necessity for crossing the Federal range with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of one cent per head per day for cattle, two cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited and defined that no substantial amount of forage will be consumed in transit.

(4) *Payment of fees; modification in fees due.* No license or permit shall be issued or renewed until payment of all fees due the United States under these regulations has been made. Fees for licenses and permits are due the United States upon issuance of the fee notice and are payable in full in advance before grazing use is authorized. Grazing privileges may be canceled or reduced pursuant to paragraph (d) of this section for failure to pay the fee in accordance with the fee notice. Any licensee or permittee who desires to make a change in authorized grazing use must file, in advance, a written request for such changes with the District Manager. If the District Manager approves the request he will issue an adjusted fee notice.

(5) *Refunds.* No refund of fees properly paid will be made because of an unauthorized failure to use the grazing privileges, either in whole or in part, represented by a license or permit, except that:

(i) During periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of disease during the life of a license or permit, the Director may in his discretion credit, remit, refund, reduce in whole

or in part, or postpone the payment of fees for such depletion period so long as the emergency exists.

(ii) When fees have been paid which are not required by law, or which are in excess of lawful requirements, an application for refund thereof may be filed with the District Manager under the provisions of the act of March 26, 1908, as amended (35 Stat. 48; 43 U.S.C. 95, et seq.), or such excess fees may be credited on subsequent fee notices.

§ 4115.2–2 Transfers and relinquishments.

(a) *Transfer of base property; effect.* (1) A transfer of a base property or part thereof, whether by agreement, operation of law, or testamentary disposition, will entitle the transferee, if qualified under § 4111.1–1, to so much of the grazing privileges as are based thereon. Except as otherwise herein provided, the existing license or permit and the grazing privileges thereunder shall automatically and without further notice be terminated or decreased by such transfer to the extent of the grazing privileges attaching to the transferred base property; except that further grazing under the license or permit may be temporarily extended pursuant to request and notification filed in accordance with § 4115.2–1(e)(8)(i); except, also, where the transfer arises as a result of testamentary disposition the existing license or permit may continue in effect until the end of the current grazing season. Thereafter applications for renewal of a license or permit shall be filed by the heirs, devisees, executor, administrator, or personal representative, as the case may be.

(2) A transferee shall, within 90 days from the date of transfer, file with the District Manager documentary evidence of the transfer and an application on a form approved by the Director for a license or permit, active or nonuse, for the grazing privileges based thereon. Failure to comply with these requirements may result in the loss of the qualifications of the base property transferred. Where, however, a transfer, or a different vesting in any manner, of a leasehold interest in land or water may result in interference with the stability of livestock operations or with proper range management, upon a finding to that effect by the District Manager, after reference to the advisory board, such land or water will lose its base property qualifications and grazing privileges based thereon will be denied.

(b) *Transfer of base property qualifications; limitations; consent of owner or encumbrancer; effect.* (1) A licensee or permittee may request the transfer of the recognized qualifications of base property then owned or controlled by him to other property owned or controlled by him, or to property owned or controlled by another person or persons qualified in accordance with § 4111.1–1. An application for approval of a transfer shall be filed with the District Manager on a form approved by the Director for land base or water base.

(2) Transfer of base property qualifications may be made under the following conditions:

(i) When an applicant owns or controls base land or lands having a forage production in excess of that required to support the licensed or permitted livestock, the qualifications may be concentrated on that part of the property having the forage production required by and which will continue to be used for the support of such livestock.

(ii) When such qualifications are to be transferred from land owned or controlled by the applicant, to land owned or controlled by others, the transfer will be recognized only to the extent such qualifications do not exceed the forage production of the new base property.

(iii) When an applicant owns or controls base water, the qualifications may be transferred to another adequate water source which will service the same range area.

(3) No transfer will be allowed under this paragraph if it interferes with the stability of livestock operations or proper range management, or adversely affects the local economy. No transfer will be allowed without the written consent of the owner or owners and any encumbrancer of the base property from which the transfer is to be made, except that in an application for transfer of class 1 qualifications where the applicant for such transfer is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such consent will not be required. Upon approval of the application by the District Manager after reference to the advisory board, the transfer shall be effective as of the date of filing of the application, and the base property from which the transfer is made will thereupon lose its qualifications to the extent indicated in the transfer.

(c) *Relinquishment of base property qualifications; limitation; effect.* Upon request, the district manager may accept a written relinquishment or waiver of grazing privileges on the Federal range and of base property qualifications of the base property owned or controlled by the applicant. Upon acceptance of such relinquishment, the base property will lose its qualifications to the extent specified: *Provided,* That no such relinquishment will be accepted without the written consent of the owner or owners, if other than the applicant, and any encumbrancer of the base property, except that if the applicant is a lessee of the base property without whose livestock operations the dependency by use or priority thereof would not have been established, such owner's consent will not be required.

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of

this chapter. The conduct of hearings are provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals to the Director will be pursuant to § 1853.7 of this chapter supplemented by Part 1840 of this chapter. An appeal from a decision of the Director may be made to the Secretary of the Interior in accordance with Part 1840 of this chapter (see § 1853.7(c) of this chapter).

§ 4115.2–4 Special rules for grazing districts.

Whenever it appears to a State Director after considering the recommendation of the district advisory board that local conditions in any district make necessary the adoption of a special rule on any of the matters in this part in order better to achieve an administration consistent with the purposes of the act, he may, recommend such a rule, supported by a factual showing of its necessity, for the approval of the Director. Such rule, if approved, shall be published in the FEDERAL REGISTER.

§ 4115.2–5 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the Federal range.* (1) *Qualification of applicants for permits.* An applicant for a permit to construct or maintain improvements under section 4 of the act, or to use and maintain improvements of such character constructed and owned by a prior occupant, on the Federal range, must be qualified under § 4111.1–1.

(2) *Applications.* Applications for such permits shall be filed in triplicate with the District Manager on a form approved by the Director.

(3) *Appeals.* The District Manager will act on the application after reference to the advisory board and such action shall be final unless the applicant or any interested party appeals in accordance with § 4115.2–3.

(4) *Assignments.* Assignments of section 4 permits shall be filed with the District Manager in triplicate on the authorized form and shall not be effective until approved by the District Manager.

(5) *Applications for use of improvements owned by prior occupant; procedure upon failure to agree.* Where an application shows that the applicant and the prior occupant have not agreed on the value of such improvements owned by the latter, the District Manager will promptly, at the applicant's expense, cause the prior occupant to be served either personally or by certified mail with a notice of the filing of the application, and an order to show cause within thirty days why the improvements should not be determined to be of the value alleged by the applicant. Upon such a showing, or if the prior occupant applies within thirty days from the date of service for an appearance before the District Manager, then in the light of such evidence as the applicant and the prior occupant may present in such appearance, the District Manager will determine the present reasonable value of the improvements. Such determination shall be final unless an appeal is taken in accordance with § 4115.2–3. Upon the failure of the prior occupant to show cause or to apply within thirty days for an appearance, the reasonable value of the improvements will be determined by the District Manager but shall be not less than the amount alleged by the applicant in his application, and the decision of the District Manager in such case shall be final. In any case when a decision has become final, payment by the applicant of the amount determined and a showing that the improvements are free of all encumbrances may be required prior to favorable action on the application for use of such improvements, and on any application for grazing privileges involving the use of such improvements.

(6) *Cooperative agreements.* A licensee or permittee may enter into a cooperative agreement with the District Manager for the construction and maintenance of range improvements on the Federal range. Failure of the licensee or permittee to comply with the terms of such an agreement within a reasonable time as allowed by the District Manager may result in cancellation of the license or permit as provided in § 4115.2–1(d).

(7) *Applications for lands containing range improvements; compensation; reservation.* Public lands embraced in a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, or other public land laws, as specified in § 4111.4.

(i) When the disposal application covers land upon which range improvements have been placed pursuant to a permit authorized under section 4 of the act, the owner thereof may be required to remove the improvements; or if the improvements are of a permanent nature, the land applicant may be required to agree in writing to compensate the licensee, permittee, or other owner of such improvements located on the lands applied for an amount to be mutually agreed upon, or, if the parties are unable to agree, then in the amount and within the time for payment as determined by the District Manager in accordance with the applicable procedure under subparagraph (5) of this paragraph.

(ii) (*a*) When the disposal application covers public land upon which range improvements have been placed by the United States, or pursuant to a cooperative agreement heretofore or hereafter entered into between the Bureau and the licensee, permittee, and/or other cooperators, the disposal application will be referred by the land office manager to the District Manager for determination as to whether it may be allowed, not withstanding such improvements, and, if so, whether with or without a reservation. If the application is to be allowed without a reservation of the improvements, the applicant may be required to agree in writing to compensate for the loss of such improvements in the amounts to be mutually agreed upon and payable separately to the Bureau and to the cooperators. If such improvements have been constructed in whole or in

part with Federal funds and are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), such application may be allowed in the discretion of the authorized officer without compensation to the United States for its share of the value of the improvements, if the authorized officer shall first determine that the grazing improvements are no longer used or needed by the United States for the purpose for which the improvements were constructed and that the probable salvage value is insufficient to warrant the expense of removal of the salvageable materials in such improvements. In the event of disagreement, the District Manager shall determine the total amount of compensation due, as provided in subparagraph (5) of this paragraph, and the time for payment. Such amount shall then be payable separately to the Bureau and to the cooperators entitled thereto, in proportion to the amount or value of their respective contributions in money, material, or labor, to the total cost of the improvement, as made by them under the original cooperative agreement as specified by the District Manager.

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Director and to the Secretary, in accordance with the rules of practice (Part 1840 of this chapter).

(iii) Under the act of July 9, 1942, as amended (43 U.S.C. sec. 315q), the holder of a grazing license or permit shall be compensated for the losses sustained by reason of cancellation of or prevention of use of authorized grazing privileges resulting from the use of lands embraced in such license or permit for war or national defense purposes, in an amount determined to be fair and reasonable and to be paid by the head of the Federal department or agency making such use. Such payment shall be deemed payment in full for such losses.

(b) *Contributions for administration, protection, and improvement of public lands.* The District Manager may accept contributions under section 9 of the act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction in the States.

(1) Any individual, association, corporation, grazing district advisory board, State or local body or private group, may enter into an agreement with the District Manager with respect to such contribution. Where the contribution is to include money, the contributor should execute the appropriate form as requested by the District Manager.

(2) Contributions may be conditioned upon their use for specific projects or in specific localities.

(3) The District Manager may authorize refund of any amounts deposited in excess of the contributor's proper share of the expense incident to the purpose for which the contribution was made.

§ 4115.2–6 Pledge of licenses and permits as security loans.

(a) A license or permit may be pledged as security for a loan of $500 or more from a lending agency if the loan is for the purpose of furthering the licensee's or permittee's livestock operations. Before making a loan, a lending agency may obtain from the District Manager a written statement concerning the status of the grazing license or permit and other pertinent information relating thereto. A service charge of $10 will be made for searching the records to furnish such information, except that Federal and State lending agencies shall be exempt from the charge.

(b) A borrower-permittee desiring an extension of the term of his permit may file a request therefor, in writing, with the District Manager, setting forth the name of the lending agency, purpose and amount of loan, and the need for the extension of the permit term. When it appears that such extension will be in accordance with applicable law and regulation and not contrary to the public interest, the District Manager, in his discretion, may extend the permit for a period not to exceed 10 years from the date of the loan, subject to the rules and regulations then in force and to such additional terms and conditions as the District Manager may provide. The provisions of this paragraph shall not be applicable to grazing licenses which are issued annually on a temporary basis prior to the issuance of term permits.

(c) If the base property to which the grazing privileges on the Federal range covered by the pledged license or permit are attached as a grazing unit is acquired by the lending agency through foreclosure or otherwise, such agency, or purchasers, lessees, or occupants of the property authorized by such agency, if qualified, may apply to be recognized as the successor licensee, or permittee. If in selling the property the lending agency takes back a mortgage on the base property, the agency will receive the same consideration as in the case of an original loan.

(d) Where a lending agency files with the District Manager notice that it has made a loan and has accepted a grazing license or permit as security therefor in conformity with the provisions of this section, the District Manager as a matter of cooperation will keep such agency advised of any adverse action affecting the license or permit, but the failure to give timely notice of such adverse action shall impose no legal liability or obligation on the District Manager or the Bureau or any of its employees.

§ 9239.3 Grazing.

§ 9239.3–2 Inside grazing districts.

A grazing license or permit may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the license or permit, or for a violation of the act or of any of the provisions of this part, or of any approved special rule.

(a) *Violations not clearly wilful.* Whenever it appears that a violation exists, not clearly wilful, the District manager shall serve written notice upon the alleged violator and upon any interested lien holder who has registered notice of his lien with the District manager. The notice shall set forth the act or omission constituting such violation, referring to the specific terms or provisions of the license or permit, of the act or of this part or of any approved special rule alleged to have been violated; and will allow the licensee or permittee a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance with such terms and conditions. If such showing is satisfactory to the District manager he will close the case; if satisfactory showing is not made within the time allowed, the violations alleged in the notice will be deemed to have been wilful and the District manager will notify the State Director thereof for further action under paragraph (e) of this section.

(b) *Violations clearly wilful; special circumstances.* Whenever it appears to the district manager that a violation is clearly wilful, grossly negligent, or repeated, or when the public health, safety, or interest requires, or when disciplinary action is advisable, the district manager will refer the matter directly to the State Director for further action under paragraph (c) or (e) of this section, whichever is appropriate.

(c) *Unlawful grazing on the Federal range; determination of damages; removal of livestock; impoundment.* (1) Whenever the charge consists of unlawfully grazing livestock on the Federal range, the notice served on the alleged violator and any interested lien holder who has filed notice on his lien with the District manager will order the alleged violator to remove the livestock or to cause them to be removed immediately or within such reasonable time as may be specified. If the alleged violator fails to comply with the notice the range manager may proceed to exercise the proprietary right of the United States in the Federal range, under local impoundment law and procedure, if practicable; otherwise he may refer the matter through the usual channels for appropriate legal action by the United States against the violator.

(2) Where the owner of the trespassing livestock, or his representative, is known, the district manager shall make a determination of the damage to the Federal range and other property of the United States and shall make a demand for payment upon the alleged violator, setting forth the foregoing values including the value of the forage consumed. Where the trespass grazing is not deemed to be clearly wilful the forage value shall be computed at the rate of $2 per animal unit month, or at the commercial rate if such rate is the higher; if the district manager deems the trespass grazing to be clearly wilful, grossly negligent, or repeated he shall compute the forage value at $4 per animal unit month, or at twice the commercial rate if such amount is the higher.

(3) In any case where neither the owner of the trespassing livestock, or his representative, is known, or where conservation of the Federal range and of the forage thereon requires it, the district manager, when so authorized by written order of the State Director, may take steps to remove the trespassing livestock by such methods and by such means not inconsistent with legislation which prohibits the use of airborne or motor-driven vehicles in the gathering of horses or burros, as may be necessary, and to dispose of them by sale or otherwise within not less than five (5) days after public notice of his intention to make such disposition, subject to the right of any owner or registered lienholder of such trespassing livestock to redeem the livestock within such nondisposal period upon payment of:

(i) The damage to the Federal range and other property of the United States.

(ii) The cost of such impoundment and removal.

(iii) The value of any forage consumed as determined in accordance with subparagraph (2) of this paragraph.

(4) If the amounts found to be due the United States in accordance with subparagraph (3), subdivisions (i), (ii), and (iii) of this paragraph are contested

by the owner of the livestock, his representative, or lienholder, the trespassing livestock may be redeemed by the posting of a cash or corporate surety bond in lieu of immediate payment. Such bond will be adequate to insure full satisfaction of the claims made. A hearing will then be scheduled before an examiner of the Bureau of Land Management. The hearing will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence will be confined to the determination of the amount of damages, value of the forage consumed, and any other amounts considered to be due the United States as a result of said trespass. The examiner will render a written decision assessing the amounts due.

(5) Where conservation of the Federal range and the forage thereon requires it, the State Director may temporarily close a grazing district or any portion thereof, to grazing by any class of livestock to be specified in such order. Notice of the order shall be published in a local newspaper and shall be posted at the County Courthouse of the County in which the closed area lies. The order shall require all owners of livestock affected thereby, to remove such livestock from the area within not less than five days from date of publication of the notice. Thereafter the District manager shall proceed to impound, remove, and dispose of, in the most humane manner in accordance with the provisions of this paragraph any such livestock trespassing or grazing in violation of the closing order.

(d) *Amicable settlement of civil cases involving unauthorized use of the Federal range or damage to Federal property.* Offers of settlement for the value of the forage consumed in trespass as determined in accordance with paragraph (c) (2) of this section and for damage to Federal range or to other property of the United States resulting from an alleged violation of any provisions of the act or of the Federal Range Code for Grazing Districts in the amount of $2,000 or less may be accepted by the district manager. Offers of settlement in excess of $2,000 will be transmitted to the State Director for appropriate action. An offer of settlement will not constitute satisfaction of civil liability for the consumed forage and damage involved until finally accepted by the district manager or the State Director. Satisfaction of civil liability tdoes not relieve the alleged violator of any criminal liability under Federal law. No license or permit will be issued or renewed until payment of any amount found to be due the United States under this section has been offered.

(e) *Disciplinary action for violations; show cause.* (1) Whenever it appears to the State Director that disciplinary action is advisable because of a wilful, grossly negligent, or repeated violation, he shall cause a written notice to be served upon the licensee or permittee. The notice shall set forth the act or acts complained of, specifically referring to the terms, conditions, or provisions of the license or permit and the section or sections of the Federal Range Code for Grazing Districts, or of the Act alleged to have been violated, and an estimate of the amount of damages resulting therefrom, including the value of the forage consumed, as determined in accordance with paragraph (c) (2) of this section. The notice will cite the license or permittee to appear before an examiner of the Bureau of Land Management at a designated time and place to show cause why his license, permit, or base property qualifications should not be reduced or revoked or renewal thereof denied and satisfaction of damages made.

(2) The hearing upon the order to show cause will be conducted so far as practicable in the same manner as other hearings before an examiner. The evidence shall be confined to the commission of the acts charged and the amount of damages, including the value of any forage consumed, due the United States. If the alleged violation is established to the satisfaction of the examiner, or upon the failure, without proper excuse satisfactory to the examiner, of the person named in the notice or his representative to appear at the hearing, the examiner will render a written decision assessing the amount of damages, including the value of any forage consumed, as determined in accordance with paragraph (c) (2) of this section, and directing the district manager to suspend, reduce, or revoke the license, permit, or base property qualifications or to deny renewal, if the facts so warrant.

(f) *Bonds for violations.* Whenever an applicant, licensee, or permittee commits a willful or wanton violation of any provision of this part or has repeatedly committed violations thereof, the State Supervisor may require him to furnish a cash or corporate surety bond on an approved form to cover all probable damages that may result from his violations for a period up to ten years. Upon the violator's failure to furnish a bond when so required, the District manager may refuse to issue or renew a license or permit, or the State Director may take action under paragraph (e) of this section, to revoke such license or permit.

(g) *Penal provision.* Under section 2 of the act any wilful violation of the provisions of the act or of this subpart or of approved special rules, after actual notice of the existence of the provisions of such act or of such rules and regulations, is punishable by a fine of not more than $500.

(h) *Appeals.* Appeal from the decision of the examiner to the Director and from the Director to the Secretary of any matter under § 9239.3–2 shall be made in accordance with the applicable provisions of § 4122.2–5 of this chapter and Appeals and Contests Parts 1840 and 1850 of this chapter.

Group 1800—Public Administrative Procedures

PART 1850—HEARINGS PROCEDURES

(Note: Subpart 1853 consists of special hearings procedures for "Inside Grazing Districts")

Subpart 1853—Grazing Proceedings (Inside Grazing Districts)

1853.1 Appeal to hearing examiner; motion to dismiss.
1853.2 Time and place of hearing; notice; intervenors.
1853.3 Authority of examiner.
1853.4 Service.
1853.5 Conduct of hearing.
1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.
1853.7 Appeals to the Director and the Secretary.
1853.8 Effect of decision suspended during appeal.
1853.9 Conditions of decision action.

§ 1853.1 Appeal to hearing examiner; motion to dismiss.

(a) Any applicant whose interest is adversely affected by a final decision of the district manager may appeal to an examiner by filing his appeal in the office of the district manager within 30 days after receipt of the decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the decision of the district manager is in error. All grounds of error not stated will be considered as waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the examiner.

(b) Any applicant for a grazing license or permit or any other person who, after proper notification, fails to protest or appeal a decision of the district manager within the period prescribed in the decision, shall be barred thereafter from challenging the matters adjudicated in such final decision.

(c) When separate appeals are filed and the issue or issues involved are common to two or more appeals, they may be consolidated for purposes of hearing and decision.

(d) The district manager will promptly forward the appeal to the State Director. Within thirty days after his receipt of the appeal the State Director may file on behalf of the district manager a written motion, serving a copy thereof upon the appellant, requesting that the appeal be dismissed for the reason that it is frivolous, the appeal was filed late, the errors are not clearly and concisely stated, the issues are immaterial, the issue or issues were included in a prior final decision from which no timely appeal was made, or all issues involved therein have been previously adjudicated in an appeal involving the same privileges, the same parties or their predecessors in interest. The appellant may file a written answer within twenty days after service of the motion upon him. The appeal, motion, the proofs of service, and the answers will be transmitted to the examiner, who shall rule on the motion, and, if the motion is sustained, dismiss the appeal by written order.

§ 1853.2 Time and place of hearing; notice; intervenors.

At least thirty days before the date set the district manager will notify the appellant of the time and place of the hearing within or near the district. Any other person who in the opinion of the district manager may be directly affected by the decision on appeal will also be notified of the hearing; such person may himself appear at the hearing, or by attorney, and upon a proper showing of interest, may be recognized by the examiner as an intervenor in the appeal.

§ 1853.3 Authority of examiner.

(a) The examiner is vested with the duty and general authority to conduct the hearing in an orderly, impartial and judicial manner, including authority to subpoena witnesses, recognize intervenors, administer oaths and affirmations, call and question witnesses, regulate the course and order of the hearing, rule upon offers of proof and the relevancy of evidence, and to make findings of fact, conclusions of law, and a decision. The examiner shall have authority to take or to cause depositions to be taken. Subpoenas, depositions, the attendance of witnesses, and witness and deposition fees shall be governed by § 1850.0–7, to the extent such regulation is applicable.

(b) The examiner also may grant or order continuances, and set the times and places of further hearings. Continuances shall be granted in accordance with § 1852.3–3, and when the ends of justice will be served thereby. Continuances will not be granted unless they are clearly justified and timely request has been made. Where it appears prior to the date of hearing that a continuance will be desired, the party desiring

the continuance should promptly file a request for continuance with the examiner, along with proof of service of the request on the district manager and on other parties. The district manager and other parties shall have five days from receipt of the request to file objection to the continuance. The examiner will then rule on the request, and, if granted, set a new date for the hearing. The district manager will notify all interested persons of the new date.

§ 1853.4 Service.

Service of notice or other documents required under this subpart shall be governed by § 1850.0–6(e). Proof of such service shall be filed in the same office where the notice or document was filed within fifteeen days after such service, unless filed with the notice or document.

§ 1853.5 Conduct of hearing.

(a) The appellant, the State director or his representative, and recognized intervenors will stipulate so far as possible all material facts and the issue or issues involved. The examiner will state any other issues on which he may wish to have evidence presented. Issues which appear to the examiner to be unnecessary to a proper disposition of the case will be excluded; but the party asserting such issue may state briefly for the record the substance of the proof which otherwise would have been offered in support of the issue. Issues not covered by the appellant's specifications of error may not be admitted except with the consent of the State director or his representative, unless the examiner rules that such issue is essential to the controversy and should be admitted. The parties will then be given an opportunity to submit offers of settlement and proposals of adjustment for the consideration of the examiner and of the other parties.

(b) Unless the examiner orders otherwise, the State director or his representative will then make the opening statement, setting forth the facts leading to the appeal (or issuance of the show cause order where that is involved). Upon the conclusion of the opening statement, the appellant shall present his case, consistent with his specifications of error. Following the appellant's presentation, or upon his failure to make such presentation, the examiner, upon his own motion or upon motion of any of the parties, may order summary dismissal of the appeal with prejudice because of the inadequacy or insufficiency of the appellant's case, to be followed by a written order setting forth the reasons for the dismissal and taking such other action under this subpart as may be proper and warranted. An appeal may be had from such order as well as from any other final determination made by the examiner.

(c) In the absence or upon denial of such motion the State Director or his representative and recognized intervenors may present evidence if such a presentation appears to the examiner to be necessary for a proper disposition of the matters in controversy, adhering as closely as possible to the issues raised by the appellant. All oral testimony shall be under oath or affirmation, and witnesses will be subject to cross-examination by any party to the proceeding. The examiner will himself question any witness whenever it appears necessary. Documentary evidence will be received by the examiner and made a part of the record, if pertinent to any issue, or may be entered by stipulation. No exception need be stated or noted and every ruling of the examiner will be subject to review on appeal. The party affected by an adverse ruling sustaining an objection to the admission of evidence, may insert in the record, as a tender of proof, a brief written statement of the substance of the excluded evidence; and the opposing party may then make an offer of proof in rebuttal. The examiner will summarily stop examination and exclude testimony on any issue which he determines has been adjudicated previously in an appeal involving the same privileges and the same parties or their predecessors in interest, or which is obviously irrelevant and immaterial to the issues in the case. At the conclusion of the testimony the parties at the hearing shall be given a reasonable opportunity, considering the number and complexity of the issues and the amount of testimony, to submit to the examiner proposed findings of fact and conclusions of law, and reasons in support thereof, or to stipulate to a waiver of such findings and conclusions.

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Director for decision.

(a) As promptly as possible after the time allowed for presenting proposed findings and conclusions, the examiner will make findings of fact and conclusions of law unless waiver has been stipulated, and will render a decision upon all material issues of fact and law presented on the record. In doing so he may adopt the findings of fact and conclusions of law proposed by one or more of the parties if they are correct. He must rule upon each such proposed finding and conclusion. The reasons for the findings, conclusions and decisions made shall be stated, and along with the findings, conclusions and decision, shall become a part of the record in any further appeal. A copy of the decision shall be sent by certified mail to the appellant and all intervenors, or their attorneys of record.

(b) The Director may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Director for consideration. In such instances the Director shall make the initial decision which shall constitute the decision of the Bureau, without prejudice to the right of any party affected to be furnished with a copy of the transcript of testimony, as provided in the next paragraph, and to appeal to the Secretary in the manner prescribed by Subpart 1844.

§ 1853.7 Appeals to the Director and the Secretary.

(a) *Notice of appeal to the Director; furnishing copies of the transcript.* Within ten days after the receipt of the decision of the examiner any party, including the State director or his representative, desiring to appeal to the Director shall file a written notice of his intention to appeal and may request a copy of the transcript of testimony. Copies of the transcript will be furnished to the State director without charge, and to other appellants and to the intervenors, at a charge of ten cents per folio, except that upon a sufficient showing to the examiner, supported by an affidavit, that an appellant or intervenor is financially unable to pay such fee, a copy will be furnished him without charge. The examiner shall include in the record proof of delivery of the transcript showing the date of such delivery. Notice of appeal and request for a copy of the transcript shall be filed through the office of the Hearing Examiner.

(b) *Appeals to the Director.* An appeal from any decision of the examiner shall be filed in the Office of the Director, Bureau of Land Management, Department of the Interior, Washington, D.C., 20240, together with any brief in support thereof, within thirty days after date of receipt of the transcript of testimony, or, if the transcript is not requested, within thirty days after receipt of the examiner's decision. Within the same period a copy of the appeal and of any brief must be served on each party named in the examiner's decision, and upon the State Director, either personally or by certified mail. Any party, including the State Director, opposing the appeal will be allowed twenty days from date of receipt of the copy of the appeal and brief within which to file in the Office of the Director a reply brief, a copy of which must be served on the appellant(s) in the same manner and the same period. The appeal in other respects shall be made in accordance with Part 1840, except that no filing fee is required.

(c) *Appeals to the Secretary of the Interior.* An appeal from the decision of the Director may be made to the Secretary of the Interior in accordance with Subpart 1844.

§ 1853.8 Effect of decision suspended during appeal.

(a) An appeal shall suspend the effect of the decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing privileges to be granted under the current application, an appellant who was granted grazing privileges in the preceding year may continue to use such privileges pending final action on the appeal, unless the decision appealed from is made immediately effective, as herein next provided.

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner or the Director may provide in the decision on an appeal before such officer, that it shall be in full force and effect pending decision on any further appeal; (3) the Director or the Secretary may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the Examiner, Director, or the Secretary upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under section 10(c) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 237), unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

§ 1853.9 Conditions of decision action.

(a) *Record as Basis of decision; definition of record.* No decision shall be rendered except on consideration of the whole record or such portions thereof as may be cited by any party or by the State Director and as supported by and in accordance with the reliable, probative and substantial evidence. The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive record for decision.

(b) *Effect of substantial compliance.* No adjudication of grazing privileges will be set aside on appeal, if it appears that it is reasonable and that it represents a substantial compliance with the provisions of Part 4110 of this chapter.

PART 4120—GRAZING ADMINISTRATION (OUTSIDE GRAZING DISTRICTS AND EXCLUSIVE OF ALASKA); GENERAL

Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

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Subpart 4120—Grazing Administration (Outside Grazing Districts and Exclusive of Alaska); General

§ 4120.1 Authority.

(a) Section 15 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1275, as amended, 43 U.S.C. 315m) vests discretionary authority in the Secretary of the Interior to lease for grazing purposes vacant, unappropriated, and unreserved public lands in the continental United States, exclusive of Alaska, which are not within established grazing districts.

(b) Section 4 of the O&C Act of August 28, 1937 (50 Stat. 875; 43 U.S.C. 1181d) vests in the Secretary of the Interior discretionary authority to lease for grazing purposes any revested Oregon and California Railroad and reconveyed Coos Bay Wagon Road grant lands in the State of Oregon, hereafter referred to as O&C lands, which may be so used without interfering with the production of timber or other purposes specified in section 1 of the Act, and to formulate rules and regulations for the use, protection, improvement, and rehabilitation of such grazing lands.

(c) The Classification and Multiple Use Act of September 19, 1964 (78 Stat. 986 as amended; 43 U.S.C. 1411–1418) expressly authorizes the Secretary of the Interior to determine which of the lands exclusively administered by him through the Bureau of Land Management are suitable for retention and management under the principles of multiple use and sustained yield. Section 5 of the Act (78 Stat. 987; 43 U.S.C. 1415) defines multiple use and sustained yield.

§ 4120.2 Definitions.

(a) "Secretary" means the Secretary of the Interior or his authorized agent.

(b) "Director" means the Director of the Bureau of Land Management or his authorized agent.

(c) "State Director" means the supervisory Bureau of Land Management official for the state in which the particular range lies, or his authorized agent.

(d) "Authorized Officer" means the Bureau of Land Management District Manager or Area Manager, to whom has been delegated the authority to take action.

(e) "District Office" means the Office of the Bureau of Land Management having direct management responsibility and administrative jurisdiction over the specific public lands involved.

(f) "Animal unit month" means the amount of forage necessary for the sustenance of one cow, or its equivalent for a period of 1 month.

(g) "Grazing capacity" means the total animal unit months of forage available from a tract or tracts of forage land during a given period.

(h) "Management area" means a designated tract or geographic area of land capable of being properly managed as a unit for multiple-use to ensure a sustained yield of forage without jeopardy to other resources or uses of the land. Such a management area may require joint use by two or more lessees.

(i) "Allotment management plan" means a program of action designed to reach specific management goals.

(j) "Grazing system" means a specified sequence of livestock grazing by designated area to accomplish management objectives.

(k) "Preference land" means the privately owned or controlled land upon which the issuance of a grazing lease is based.

(l) "Contiguous land" means land that borders upon or touches upon public land.

Subpart 4121—Awards of Grazing Leases

§ 4121.1 Qualifications of applicants.

§ 4121.1–1 Minimum qualification requirements.

An applicant for a grazing lease is qualified if:

(a) He is a person engaged in the livestock business, has a need for the grazing use of the land, and is a citizen of the United States[1] or;

(b) It is a group or association authorized to conduct business under the laws of the State in which the grazing privileges sought are to be exercised, all members of which are qualified under paragraph (a) of this section, provided that the agreement or articles of association under which the association has been formed are approved by the State Director, or;

(c) It is a corporation, the controlling interest in which is vested in persons qualified under paragraph (a) of this section and which is authorized to do business under the laws of the State in which grazing privileges sought are to be exercised: *Provided,* That the articles of incorporation have been approved by the Authorized Officer.

§ 4121.1–2 Effect of transfer arising through operation of law.

The acquisition of rights in preference land by an unqualified person through operation of law or testamentary disposition will not adversely affect any outstanding lease, or preclude the renewal of a lease based upon such land, for a period of 2 years after such acquisition. Upon the failure of such person to qualify within the 2-year period, the lease will be subject to cancellation in accordance with § 4125.1–1(h).

[1] See 43 CFR 1811.1 regarding evidence of citizenship status.

§ 4121.2 Adjudication of applications for grazing leases.

§ 4121.2–1 Minimum requirements, rating and classification of lease land.

(a) *Land resource consideration.* The Authorized Officer will determine the availability of public land for grazing leases and the amount of forage available for use by livestock in conjunction with considerations of forage reservations for watershed protection, wildlife, and other multiple uses.

(b) *Grazing capacity, seasons of use, and maximum annual period of use.* The Authorized Officer will establish the grazing capacity, determine the kind and class of livestock use to be proper for each management area and classify each area for the proper seasons of use and for the maximum period of time for which the lessee will be allowed to use the leased land therein during any one year, except that where the leased land consists chiefly of isolated or fragmented tracts of land which are not proposed for long-term retention and management, the Authorized Officer may establish the grazing capacity only.

(c) *Applicants.* Grazing leases may be issued to qualified applicants to the extent that public land is available in the following order and amounts:

(1) To applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands. When the public land consists of an isolated or disconnected tract embracing 760 acres or less, owners, lessees, or other lawful occupants of lands contiguous thereto or cornering thereon shall have a preference right to lease the whole of such tract, upon terms and conditions prescribed by the Secretary: *Provided,* That the preference right must be asserted during a period of 90 days after such tract is offered for lease.

(2) To applicants owning, leasing, or lawfully occupying noncontiguous lands to the extent necessary to permit the proper use of such noncontiguous lands.

(3) To other applicants.

(d) *Conflicting applications.* (1) When more than one qualified applicant applies for the same public land and it appears that a division of the area may be made and will not result in improper land use, the Authorized Officer will allow the applicants an opportunity, within a specified time limit which he shall set, to agree to a division of the lands. A division of the lands may be made either by agreement between the conflicting applicants which is acceptable to the Authorized Officer, or by determination of the Authorized Officer where no acceptable agreement is reached. However, where it appears that a division of the land would

result in improper land use, or where proper land use management will be advanced thereby, the Authorized Officer may require that joint use be made of the management area.

(2) The Authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application[2] (where access is not presently available), and (vii) other land use requirements.

§ 4121.2–2 Leases of withdrawn or reserved lands, preference right leases for lands restored from withdrawal.

(a) The Authorized Officer may issue grazing leases for public lands withdrawn for resurvey, or withdrawn and reserved in aid of legislation, or for power sites, classification or other public purposes,[3] if the use of the land for grazing is consistent with the purposes of the withdrawal. Lands included in stock driveway and public water reserve withdrawals may be leased in accordance with subpart 2321 of this chapter. Any lease issued covering withdrawn lands must contain the stipulations which have been prescribed for the protection and use of the land for the purpose for which it was withdrawn or reserved.

(b) Where public lands are restored from a withdrawal and the Authorized Officer determines that a grazing lease for the lands may be issued, the party using such lands or part thereof for grazing purposes under authority of the agency which had jurisdiction over the land immediately prior to their restoration, shall have a superior preference right to lease the restored public lands previously used by him. The preference right must be asserted by an application for a grazing lease (see § 4125.1–1(a)(1)), and must be filed within 90 days after the end of the current lease year under which the land is being used, whichever is the later. The application must be accompanied by a copy of the prior grazing lease, license, permit or other authority upon which the superior preference claim is based.

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[2] Where the United States obtains such a right-of-way, it will assume responsibility therefor to the full extent authorized by law.

[3] Certain lands withdrawn for reclamation purposes are, pursuant to the cooperative agreement of Feb. 28, 1945, between the Bureau of Reclamation and the Bureau of Land Management, leased in accordance with principles of section 15 leases, under authority of subsection (I) of section 4, Act of Dec. 5, 1924 (43 Stat. 703, 43 U.S.C. sec. 501). Those lands withdrawn for reclamation purposes which are not subject to the cooperative agreement of Feb. 28, 1945, will upon restoration from the reclamation withdrawal, become subject to the provisions of paragraph (b) of this section.

§ 4121.3 Adjustments of grazing use.

§ 4121.3–2 Increases.

Increases in grazing capacity, when determined by the Authorized Officer, will be apportioned in a manner that will assist in the stabilization of the livestock operations after consideration of other land uses.

§ 4121.3–3 Decreases.

(a) Downward adjustments in authorized grazing use may be imposed during the term of a grazing lease where, for example, the lease erroneously includes lands not subject to lease, or authorizes use in excess of the grazing capacity of the leased land, or where a downward adjustment is required to facilitate other proper multiple uses on the area, or similar situations.

(b) Adjustments to balance authorized use with the proper stocking rate of the management area will be apportioned equitably or as agreed to among the lessees and the Authorized Officer. Such adjustments may be made by authorizing fewer livestock, or a shorter grazing season, or by both methods as determined by the Authorized Officer.

(c) The Authorized Officer will notify each affected lessee by certified mail of his decision to make an adjustment in authorized use to reach the proper stocking rate of any leased area. The notice will state the manner in which the adjustment is to be made and will allow 30 days from receipt thereof in which the lessee may file an appeal in accordance with § 4125.1–3. If no appeal is filed within the 30-day period, the adjustment will be made in accordance with the decision and no further appeal will be allowed. If a timely appeal is filed, the adjustment under consideration will be deferred pending a final decision on such appeal. Any adjustment provided by the final decision will be applied to its full extent for the grazing season immediately following the effective date of the decision.

(d) Public lands under a grazing lease issued pursuant to this part are subject to classification, withdrawal, or other disposal under the Taylor Grazing Act, the O&C Act, or other applicable public land laws. Reasonable notice of a pending or proposed classification, withdrawal, or disposal which might result in a diminution of the area of the leased land will be given to the lessee, consistent with Subpart 2411 of this chapter and subject to the right of protest or appeal to the Director and to the Secretary of the Interior as may be provided in such notice and the rules of practice, Part 1840 of this chapter.

Subpart 4122—Management Practices

§ 4122.1 Management considerations.

§ 4122.1–1 Multiple use.

All use and management practices, include grazing and the issuance of grazing leases, shall be in conformance with the concepts of multiple use and sustained yield (see 43 CFR 2410.0–5 (o) and (p)). Any public lands leased under the regulations of this part which are suitable for multiple use shall be managed for multiple use to the fullest extent possible, including provision of adequate access for the various multiple users. The Authorized Officer will negotiate for such access with the appropriate applicant(s) or lessee(s), utilizing Department of the Interior easement or acquisition procedures. Should negotiations prove ineffective, the United States will acquire the necessary access by appropriate legal procedures.

§ 4122.1–2 Areas of limited multiple use values.

On areas of public land with limited multiple use values the Authorized Officer may issue leases based on grazing capacity of the area only, or may include livestock numbers and season and time of use. Grazing leases based on the criteria of this section are usually for isolated and fragmented tracts of public land. However, the multiple use values involved, not size of the public land area, will be the determining factor.

§ 4122.1–3 Areas of important multiple use values.

(a) On areas of public land with important multiple use values in addition to livestock grazing or where the primary use is for sustained livestock grazing, the Authorized Officer may, before the grazing lease is issued, or where an existing lease provides for the issuance of an allotment management plan, develop in cooperation with the lease applicant or lessee an allotment management plan. Such plan shall be incorporated into the lease as a part of the terms and conditions of the lease. The plan shall provide for the proper use and conservation of the public lands, at the same time providing for the lessee the maximum possible operations flexibility. The management plan will identify objectives for the allotment, a grazing system and procedures for evaluation of management.

(b) In the absence of mutual agreement between the lessee and the Authorized Officer on an allotment management plan, the Authorized Officer may, in lieu of such plan, stipulate as a condition of the lease grazing system requirements necessary to assure proper management of the public land and its resources. In such cases the Authorized Officer may issue short-term leases until such time as he determines that the grazing system requirements are adequate to assure proper multiple use management of the public land.

§ 4122.2 Designations of grazing areas for exclusive use by specified classes of animals.

When necessary for the proper use or orderly administration of a lease area, the Authorized Officer may designate certain areas for use exclusively by a certain kind or class of livestock or wildlife.

§ 4122.3 General rules of the range.

The acts prohibited and rules of fair range practice as detailed in § 4112.3–1 and § 4112.3–2 of this chapter shall apply to all leases issued under the regulations in Part 4120.

Subpart 4123—Supervision and Inspection

§ 4123.1 Procedures for enforcement of rules and regulations.

A grazing lease may be suspended, reduced, or revoked, or renewal thereof denied for a clearly established violation of the terms or conditions of the grazing lease, or for a violation of the Taylor Grazing Act or of the O&C Act or of any of the provisions of this Part. (See § 9239.3–1 of this chapter for detailed regulations). The lease of public lands for livestock grazing under these regulations in no way limits the Bureau's authority to protect the lands against unauthorized use or occupancy.

Subpart 4124—Local Associations

§ 4124.1 Local associations of stockmen.

Grazing associations formed by lessees will be recognized in accordance with regulations detailed in § 4114.4.

Subpart 4125—Records and Administrative Procedures

§ 4125.1 Procedures.

§ 4125.1–1 Leasing procedures; requirements and conditions.

(a) *Filing and action on lease applications.* (1) An application for a grazing lease shall be executed on a form approved by the Director and filed in the District Office of the Bureau of Land Management having management responsibility over the public lands applied for in the application. Proof of ownership or control of contiguous lands may be required by the Authorized Officer where the applicant seeks to assert a preference right.

(2) A service fee of $10 will be charged for all applications to lease public lands including initial applications and those made pursuant to assignments and consolidations. However, no fee will be charged for consolidations requested by the Authorized Officer or for a regular renewal of an existing lease.

(3) Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period

may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

(4) A timely filed application for renewal of an existing grazing lease does not confer on the lessee any right to a renewal but will authorize the continued grazing use of the lands by the lessee in accordance with the provisions of the existing lease pending final action on the application for renewal. The fee for such extended use shall be consistent with the then current fee schedule.

(5) An application for a grazing lease must describe the lands applied for by one of the following methods: (i) By legal subdivisions, or (ii) by metes and bounds description, or (iii) by designated management area.

(6) An application for a grazing lease may include O&C lands or public lands or combinations thereof.

(b) *No right is conferred by application prior to lease.* Since the issuance of a grazing lease is discretionary, the filing of an application for lands not then under lease does not create any right in the applicant to use the lands applied for pending the issuance of a grazing lease.

(c) *Action on defective and nonallowable applications.* (1) The Authorized Officer may require any defects in an application be corrected or additional information to be furnished. The Authorized Officer may reject any application if the applicant fails to correct defects in the application or fails to provide the additional information within the time allowed, which period shall not be less than fifteen (15) days from the date of receipt by the applicant of notice of such defects or required information.

(2) The Authorized Officer shall reject the application if the land applied for (i) is in an allowed entry, (ii) is otherwise appropriated or reserved and not subject to lease under the Taylor Grazing Act or the O&C Act, (iii) is not public land, (iv) is under existing grazing lease, or (v) is of such character that livestock grazing would be detrimental to the resources or other uses of the land.

(d) *Consolidations.* A consolidation of leases held by a lessee may be requested by the lessee on a renewal application or may be required by the Authorized Officer on his own motion. The term of the consolidated lease shall be determined through negotiation between the lessee and the Authorized Officer.

(e) *Protests and appeals*—(1) *Protests.* A protest against the approval of an application for a lease should be filled in the same office where the application for a grazing lease was filed; it should describe the lands involved, contain a complete disclosure of all facts upon which the protest is based, and be accompanied by evidence of service on the applicant of a copy of the protest. The Authorized Officer will consider the protest, and will serve a copy of his decision on the affected parties in person or by certified mail, and in accordance with § 4125.1–3 will advise the protestant and other parties of their right to appeal to the Director.

(2) *Appeal by applicant.* The lease will be executed by the Authorized Officer and transmitted to the lessee only after final action action is taken on any protest or appeals which may have been filed. The applicant's signature to the lease shall constitute his acceptance of the lease as executed by the Authorized Officer. Nonacceptance of the lease does not prejudice the applicant's right to appeal.

(f) *Additional requirements and stipulations.* In addition to the provisions set forth in the standard Grazing Lease Form, the lease will provide for the multiple use requirements of the area, the number of livestock to be grazed, proper grazing seasons, allotment management plan, grazing system, reservation for authorized trailing, and any other conditions or requirements which the Authorized Officer may deem necessary and proper, except as provided under §§ 4121.2–1(b), 4122.1–2, and 4122.1–3.

(g) *Subleases.* No part of the lease land may be subleased by the lessee. The grazing on the lease area of livestock not owned or controlled by the lessee with or without the lessee's consent is prohibited.

(h) *Cancellation or reduction of leases; show cause, appeal to Director.* Leases are subject to cancellation or reduction for the lessee's failure to comply with the terms of the lease or the provisions of this part of the regulations, or in any case that a lease confers use in excess of that properly allowable. In any such case the Authorized Officer will notify the lessee that the lease is being held for cancellation or reduction in whole or in part, and will allow the lessee fifteen (15) days from receipt of the notice within which to show cause why such action should not be taken. The notice will fully set forth the reasons for the proposed action, specifically referring to the pertinent provisions of the regulations, and will be served on the lessee personally or by certified mail. The Authorized Officer will consider any cause shown and, if not satisfied as to its sufficiency, or if no cause is shown, he will notify the lessee personally or by certified mail that the lease has been cancelled or reduced as the case may be. Such decision is subject to appeal to the Director in accordance with § 4125.1–3.

(i) *Terms and conditions.* The issuance and continued effectiveness of all grazing leases will be subject to the following terms and conditions.

(1) A grazing lease will authorize grazing use not in excess of the grazing capacity available for use by livestock as determined by the Authorized Officer in accordance with § 4121.2–1(b).

(2) Grazing leases will provide for the grazing of livestock on the leased land only during that part or parts of the year for which the area has been classified as proper for use, except as provided in § 4121.2–1(b).

(3) Upon the diminution of the public land used under any grazing lease due to withdrawal, appropriation, selection, or otherwise, the lease will be adjusted proportionately to the reduced grazing

capacity and the grazing fee will be adjusted accordingly commencing with the ensuing lease year.

(4) The grazing lease will be terminated in whole or in part because of loss of control by the lessee of non-Federal lands that have been recognized as the basis for a grazing lease.

(5) The area of the leased land may be reduced if it is determined that the land is required for the protection of forest plantations or sources of community water supply; or for recreation facilities, wildlife habitat, stock driveways, roads, trails, townsites; or for other public purposes. When it is determined by the Authorized Officer that the leased land is excessive to the lessee's need or that the lessee is not making substantial use of the leased land, the Authorized Officer may cancel the lease, reduce the acreage of the grazing lease, or reduce the grazing use allowed in accordance with the provisions of § 4125.1–1(h). In the case of any such acreage reduction a proportionate fee adjustment will be made. If the entire grazing lease is cancelled, the Director may refund any portion of the grazing fees paid for the cancelled lease term.

(6) The Authorized Officer may establish the size and boundaries of a grazing lease area to facilitate the proper and effective management of the resources. In so doing, he will give consideration to seasons of use, topography, and establishment of systems of grazing and any other pertinent factors. He may determine that two or more applicants shall be authorized to use the public land within a management area.

(7) The Authorized Officer may make adjustments in grazing leases at any time when necessary to comply with these regulations for the public lands.

(8) If necessary to rehabilitate the vegetative resources on the public land, the Authorized Officer may temporarily close the leased land to grazing or reduce livestock use whenever vegetal cover is depleted due to drought, epidemic, fire or any other cause, or for rehabilitation of the area. Such action will not exclude the closed area from the grazing lease.

(9) Authorized grazing use of the leased land may be adjusted by the Authorized Officer to conform to needed refinements in the allotment management plan as a result of more accurate determinations of grazing capacity, season and area of use, class of livestock, etc. Proportionate adjustment will be made in the annual grazing fee for the subsequent grazing season.

(10) The issuance of a grazing lease does not alter or restrict the authorized public use of the leased land including, but not limited to, hunting, fishing, camping, or hiking on such lands in accordance with the laws of the United States or of the State in which the lands are located, nor may the lessee interfere in any manner with the proper exercise of such rights. Neither shall the lessee maintain locked gates, signs, or other devices which prevent or interfere with public use of the leased land. Nor shall the lessee restrict or limit prospecting, locating, developing, mining, or patenting the mineral resources in the public land; miners, prospectors, and mineral lessees of the United States and all other authorized persons shall be entitled to enter the leased land for all lawful purposes.

(11) The Authorized Officer may require the lessee, as a condition to the granting and continued effectiveness of grazing leases, to fence or to contribute an equitable share to the cost of fencing the allotted areas and the maintenance of such fences.

(j) *Change in grazing seasons.* Any lessee who desires to use the leased land for a period or periods other than those authorized by his lease may, upon written approval of the Authorized Officer and prior to his annual billing notice, be allowed to use the amount of his authorized grazing use during any other period of time for which the lease area is classified as proper for use: *Provided*:

(1) Adjustment in season, time, or numbers does not result in an increase in the number of animal unit months utilized;

(2) Such use will not be detrimental to the resources of the leased area; and

(3) Such use will not adversely affect other lessees.

(k) *Interest of Members of Congress prohibited.* No Member of or delegate to Congress shall be admitted to any share or part of any grazing lease issued or to derive any benefit to arise therefrom (41 U.S.C. sec. 22; 18 U.S.C. sec. 431–433).

l) *Exchange-of-use agreements.* The Authorized Officer may enter into an exchange-of-use agreement with any applicant having ownership or control of non-Federal land interspersed with and normally grazed in conjunction with the surrounding public land. The grazing use authorized, will be without payment of fees, and will not exceed the grazing capacity of such non-Federal land.

(m) *Fees for grazing leases and crossing permits*—(1) *Lease rates.* Each holder of a grazing lease will be charged annual grazing fees for the animal unit months (AUM's) authorized by the grazing lease, at a rate per animal unit month (AUM). All grazing fee billings shall be issued in accordance with the rates prescribed in subdivision (ii) of this subparagraph. All livestock six (6) months of age or over allowed on the leased area will be considered as a part of the total number for which a lease has been issued. No fees will be charged for livestock under 6 months of age.

(i) A minimum annual charge of $10 will be made on all leases.

(ii) The rate or rates per AUM for the fee year, beginning March 1 and ending the last day of February, will be established by the Director, and notice thereof shall be published in the FEDERAL REGISTER. The rate or rates will become effective as of the date of such publication and will be applied to all billing notices issued thereafter.

(2) *Crossing permits.* Upon application filed with the Authorized Officer by any person showing the necessity for crossing the public lands with livestock for proper and lawful purposes, a crossing permit may be issued to him at a charge, payable in advance, of 1 cent per head per day for cattle, 2 cents per head per day for horses, and one-fifth cent per head per day for sheep and goats. A minimum charge of $10 will be made for each crossing permit, except that no fee will be charged where the trail to be used is so limited that no substantial amount of forage will be consumed in transit.

(3) *Payment of rental fees and effect of failure to pay.* No grazing lease or renewal thereof shall be executed by the Authorized Officer until payment of all fees due the United States under the regulations in this part has been made. The first grazing fee payment must be made within 15 days of receipt of billing; if not paid within that time, the lease shall not be issued by the Authorized Officer. Upon timely payment of the first grazing fee payment, the lease will be executed and forwarded to the lessee. Subsequent annual grazing fee payments are due the United States upon receipt of the billing notice and are payable in advance of the first grazing period for the full amount as indicated on the fee notice. No lease shall be effective to authorize grazing use thereunder until such advance payment has been made. A lease may be canceled pursuant to § 4125.1–1 (h) for failure to make timely payment.

(4) *Refunds.* No refunds of grazing fees properly paid in accordance with the regulations in this part and the terms of the grazing lease will be made because of the lessee's failure to make full grazing use as authorized by the lease. However, during periods of range depletion due to severe drought or other natural causes or in case of a general epidemic of livestock disease during the life of the grazing lease, the Director on proper application may remit, refund, reduce in whole or in part, or postpone the payment of grazing fees for such period of depletion or general epidemic as he may determine. No part of the grazing fee paid will be refunded because of cancellation, relinquishment, or assignment, except as provided in § 4125.1–1(i) (3), (5), (8), and (9).

(n) *Period of lease.* A grazing lease or lease renewal may be issued for any period not in excess of 10 years and may be limited by the Authorized Officer to the term of a lease or control of lands that have been recognized as the basis for the grazing lease.

§ 4125.1–2 Assignment and relinquishment of grazing lease.

(a) *Assignment of grazing lease.* The lessee may assign a grazing lease only with the consent of the Authorized Officer; provided that the assignee has control of preference lands. The Authorized Officer will require the assignee to furnish proof of ownership or control of preference lands. The proposed assignment must be made on a form approved by the Director and must be filed with the Authorized Officer within 90 days from date of its execution. It must contain all the terms and conditions agreed upon between the parties and will be made effective only for the unexpired period of the assignor's lease. The assignment, properly executed and signed by the assignor, and the new application signed by the assignee will constitute the assignee's acceptance of the terms of the grazing lease. No assignment will be recognized or confer on the assignee any right to use the leased area until approved by the Authorized Officer. Advance grazing fees paid by the assignor may be credited to the assignee. All cooperative agreements and permits to construct or maintain range improvements on the leased land must be assigned at the time of the grazing lease assignment.

(b) *Relinquishment of grazing lease.* Upon written request, the Authorized Officer may accept a grazing lease relinquishment, in whole or in part, provided that all fees and charges then due have been paid.

§ 4125.1–3 Appeals.

Any applicant or lessee whose interest is adversely affected by a final decision of the Authorized Officer may appeal to the Director, and from the Director to the Secretary, in accordance with the procedure for appeals and contests set forth in Part 1840 of this chapter.

§ 4125.1–4 Range improvements and contributions.

(a) *Construction and maintenance of improvements on the leased lands*—(1) *Qualifications of applicant for range improvement permit.* An applicant for a permit to construct or maintain range improvements, or to use and maintain range improvements constructed and owned by a prior occupant of the leased land, must be qualified under § 4121.1–1 and hold a valid lease.

(2) *Applications.* Applications for permits must be approved prior to construction. Applications for permits must be filed with the Authorized Officer on a form approved by the Director. Construction of range improvements without an approved permit may result in cancellation of the grazing lease as provided in § 4125.1–1(h).

(3) *Appeals.* The Authorized Officer will act on the application and such action shall be final unless the applicant appeals in accordance with § 4125.1–3.

(4) *Assignments.* Assignments of range improvement permits must be be filed with the Authorized Officer on a form approved by the Director and are not effective until approved by the Authorized Officer.

(5) *Permit standards.* The Authorized Officer will specify the minimum Bureau of Land Management standards and design for all range improvements. Failure to comply with the standards and design

may result in cancellation of the range improvement permit and/or the grazing lease as provided in § 4125.1–1(h).

(6) *Cooperative agreements.* A lessee may enter into a cooperative agreement with the Authorized Officer to construct and maintain range improvements upon the leased land. Failure to comply with the terms of such an agreement within a reasonable time, as allowed by the Authorized Officer, may result in the cancellation of the agreement and/or the grazing lease as provided in § 4125.1–1(h). A cooperative agreement for range improvements shall be made on a form approved by the Director.

(7) *Removal of improvements; compensation for loss of improvements.* (i) When a grazing lease expires or is terminated, the Authorized Officer may require an applicant for a subsequent lease to agree to compensate the prior lessee for the current value of his share of the cost of authorized permanent improvements placed on the leased land. The prior lessee must file a written application for compensation within 30 days after the date of termination or expiration of his lease or the date of the final decision terminating it. The amount of compensation shall be determined in accordance with § 4125.1–4(a)(8)(i). The failure of the new lessee to pay the prior lessee in accordance with such agreement shall be cause for cancellation of the new grazing lease.

(ii) The lessee will be allowed ninety (90) days from the date of expiration or termination of the grazing lease within which to remove improvements not disposed of in the manner set forth in subdivision (i) of this subparagraph; if not removed or otherwise disposed of within the said period or any extension thereof granted by the Authorized Officer, such improvements shall become the property of the United States. No improvements may be removed if the lessee is in default with respect to the grazing lease.

(8) *Leased land subject to disposition; compensation for loss of improvements.* (i) Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the Authorized Officer. The failure of the applicant to comply with the agreement or the conditions fixed by the Authorized Officer shall be cause for cancellation of any right or interest in the land acquired by the applicant by reason of the allowance of the application. If improvements have been constructed in whole or in part with Federal funds, are administered by the Bureau of Land Management, and the application for disposal is in satisfaction of any lieu or indemnity selection right of any State under R.S. 2275, as amended (43 U.S.C. 851), the application may be allowed in the discretion of the Authorized Officer without compensation to the United States for its share of the value of the improvements. In such cases, the Authorized Officer shall determine whether the grazing improvements are needed by the United States and whether the probable salvage value is sufficient to warrant removal of the salvageable materials.

(b) *Contributions for administration, protection, and improvement of public lands.* The Authorized Officer may accept contributions, made under section 9 of the Taylor Grazing Act, of labor, materials, equipment, or money, toward any of the Bureau's functions in administering, protecting, and improving public lands under its jurisdiction.

(1) Any individual, association, corporation, State or local body or private group, may enter into an agreement with the Authorized Officer with respect to such contribution.

§ 4125.1–5 Pledge of leases as security for loans.

(a) A grazing lease may be pledged as security for a loan from a lending agency if the loan is for the purpose of furthering the lessee's livestock operations. Before a loan is made, the lending agency may obtain from the Authorized Officer a written statement concerning the status of the grazing lease and related information. A service charge of $10 will be made for searching the records, except that Federal and State lending agencies shall be exempt from such charge.

(b) A borrower-lessee desiring an extension of the grazing lease term may file a request therefor with the Authorized Officer, setting forth the name of the lending agency, purpose and amount of the loan, and the need for an extension of the grazing lease. If the Authorized Officer determines that an extension will not conflict with the applicable laws and is not contrary to the public interest, he may issue a new grazing lease for a period up to 10 years from the date of the loan but not to exceed the period of the loan.

(c) If the preference land of a lessee is acquired by a lending agency through foreclosure or otherwise, the agency, its grantees and lessees, or parties authorized by it to occupy the preference lands, may, if qualified, file an application for the issuance of a new grazing lease. If, in selling the property, the lending agency takes back the mortgage on the property, the agency will receive the same administrative consideration as in the case of an original loan.

(d) Where a lending agency files notice with the Authorized Officer that it has made a loan and has accepted a grazing lease as security, such agency will be advised of any adverse action taken affecting the lease. The failure of the Bureau of Land Management to give timely notice of any such adverse action shall impose no liability or obligation on the Bureau of Land Management or any of its employees.

§ 9239.3 Grazing.

§ 9239.3–1 Outside grazing districts.

(a) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this subpart or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespassers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts.

(b) A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated shall be in default and shall be subject to the provisions of § 4122.6 of this chapter. In addition he may be subject to trespass action in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter, modified so far as practicable and necessary to include Federal land outside of established grazing districts.

(c) When the alleged trespasser is not a lessee of lands under the regulations of this subpart the signing officer may take action against the trespasser in accordance with the practices and procedures in §§ 9239.3–2(a), 9239.3–2(c) (1), (2), (3), (4), 9239.3–2(d), and 9239.3–2(g) of this chapter modified so far as practicable and necessary to include lands subject to lease under the provisions of this subpart or within a stock driveway.

This Circular replaces and revokes Circulars 2217, 2245 (Part 4120, 33 F.R. 11516), and that portion of Circular 2220 relating to Part 4120.

GPO 846-034

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2247]

PART 2230—SPECIAL USES

Subpart 2236—Permits

Also see composite of Circulars 2247 & 2251 filed behind 2251

Subpart 2236 is revised in its entirety to read as follows:

Subpart 2236—Permits

Sec.

2236.0–2 Objectives.
2236.0–3 Authority.
2236.0–5 Definitions.
2236.1 General provisions.
2236.1–1 Application.
2236.1–2 Fees.
2236.1–3 Permits and renewals.
2236.1–4 Rental charges.
2236.1–5 Rights of applicants and permittees.
2236.1–6 Segregative effect.
2236.2 Special provisions.
2236.2–1 Advertising displays.
2236.2–2 Water wells.

§ 2236.0–2 Objectives.

(a) *General.* It is the policy of the Secretary of the Interior, in the administration of the lands under the jurisdiction of the Bureau of Land Management, to permit the beneficial use thereof, where practical, for special purposes not specifically provided for by existing law. Permits for such special use will not be issued, however, in any case where the provisions of any law may be invoked. Permits will not be issued where such issuance would be inconsistent with the objectives of the regulations in this chapter or would be in conflict with any Federal or State laws.

§ 2236.0–3 Authority.

Pursuant to sections 446, 453 and 2478 of the Revised Statutes (1875), as amended, 43 U.S.C. secs. 1, 2, 1201 (1964); the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. secs. 1411–1418 (1964)); the Act of July 14, 1960 (70 Stat. 506; 43 U.S.C. secs. 1361–1364 (1964)) and other authority, the Director of the Bureau of Land Management is authorized to perform, under the direction of the Secretary of the Interior, all executive duties relating to the public lands and other lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2236.0–5 Definitions.

For the purposes of the regulations in this subpart,

(a) The term "advertising displays" means any signs or other devices erected or maintained for outdoor advertising or for outdoor public information purposes, except signs erected and maintained by Federal, State, or local highway authorities within highway rights-of-way.

(b) The word "highway" is used in its general sense to include all routes of public surface travel.

(c) The word "lands" means lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2236.1 General provisions.

§ 2236.1–1 Application.

(a) *Qualification of applicants.* Applications pursuant to this subpart may be filed by any of the following: (1) Any person 21 years of age, or over, who is a citizen of the United States, or who has declared his intention to become a citizen, (2) any group or association composed of such persons, (3) any corporation organized under the laws of the United States or of any State thereof, authorized to conduct business in the State in which the land involved is situated, (4) any agency of the Federal Government, or (5) any State or political subdivision thereof.

(b) *Form to be used.* Applications must be executed on a form approved by the Director.

(c) *Filing.* The application may be filed in any office of the Bureau of Land Management having jurisdiction over the lands.

§ 2236.1–2 Fees.

Each application for a special land-use permit or a renewal thereof must be accompanied by a nonrefundable application service fee of $10. However, no charges will be made for applications by agencies of the Federal Government or agencies of the States and political subdivisions thereof.

Published in 33 F.R. 14111, September 18, 1968 - Effective 30 days after publication.

Circular Distribution List

§ 2236.1–3 Permits and renewals.

(a) *Terms; general.* (1) A special land-use permit will be revocable in the discretion of the authorized officer at any time, upon notice, if in his judgment the lands should be devoted to another use, or the conditions of the permit have been breached.

(2) A special land-use permit will not be issued for a larger area than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed.

(b) *Stipulations.* A special land-use permit shall contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Renewals.* Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will, upon the filing of an application for renewal, be the preferred applicant for a new permit, under regulations then in force, provided no superior claim to the land has been asserted in the meantime. Renewal, if granted, will be in the form of a new permit.

§ 2236.1–4 Rental charges.

(a) Each permittee will be required to pay to the Bureau of Land Management, in advance, a rental determined by the authorized officer as the fair market value of the privileges granted. The authorized officer will determine whether payments will be annual or otherwise; he may adjust the rental at the end of each payment period. In no case will the minimum rental charge be fixed at less than $10 per payment.

(b) No rental charges will be made for special land-use permits to agencies of the Federal Government and agencies of States and political subdivisions thereof.

(c) No refunds of rentals properly paid will be made because of the revocation of the permit at any time, or because of interference with or prevention of the exercise of the privileges granted by the permit, by mineral prospectors, locators, licensees, permittees, lessees, or patentees, or by permittees under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), or by grantees or permittees of rights-of-way under existing laws.

§ 2236.1–5 Rights of applicants and permittees.

(a) *Occupancy of land prior to permit.* An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit under this or other applicable regulation, or any use thereafter except in accordance with the terms of the permit, is unauthorized, and constitutes a trespass (see Subpart 9239 of this chapter).

(b) *Timber and other materials.* A special land-use permit will not entitle an applicant to cut and remove timber or remove any other materials from the land. If he wishes permission to do so, he must make application for such permission in accordance with the governing laws and regulations.

(c) *Assignment of permit.* (1) A permittee may not assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be accompanied by a statement signed by the assignee agreeing to be bound by the provisions of the permit if the assignment is approved, and a showing that the assignee possesses the qualifications set out in § 2236.1–1(a).

(2) All applications for assignment of special land-use permits must be accompanied by a nonrefundable application service fee of $10.

(d) *Removal of improvements.* After the revocation or expiration of a permit, the permittee may, within the time specified by the authorized officer, remove all structures which have been placed upon the premises by him or his assignor, provided all rental charges due the Government have been paid. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment or, upon revocation or expiration of the permit, fails to remove the structures within the time required by the authorized officer, the structures will become the property of the United States.

§ 2236.1–6 Segregative effect.

The lands embraced within special land-use permits will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, including:

(a) Applications and selections under nonmineral laws, subject to the revocation of the permit.

(b) Prospecting, location, developing, mining, entering, leasing, or patenting of minerals under the applicable general mining laws or mineral leasing laws.

(c) Permits issued under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), to explore for objects of antiquity on the public lands.

(d) The acquisition by grant or permit of rights-of-way under existing laws.

§ 2236.2 Special provisions.

§ 2236.2–1 Advertising displays.

(a) *Applicability of general regulations.* All the general provisions of § 2236.1 not inconsistent with the special provisions relating to permits for advertising displays are applicable to such permits.

(b) *Applications.* In addition to the requirements of § 2236.1–1, an application for a special land-use permit for an advertising display shall contain sufficient information concerning the nature, design, and lighting effect, if any, of the display to enable its construction from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, must be furnished. The application must identify the highway along which it is proposed to erect the display and must give the distance and direction of the site, measured by highway travel to the nearest cities or towns.

(c) *Additional requirements.* In addition to the requirements of §§ 2236.02 and 2236.1:

(1) *Lands along Interstate and primary highway Systems.* For lands within rights-of-way, and within 660 feet of the edge of the rights-of-way of the National System of Interstate and Defense Highways (Interstate System) and the primary system (Title 23, United States Code), no permit for the erection and maintenance of advertising signs will be issued until national standards for such displays are promulgated by the Secretary of Transportation in accordance with the Beautification Act of 1965. When such standards are promulgated, permits may, in the discretion of the authorized officer, be issued, consistent with such standards and such additional standards as may be established by the Secretary of the Interior.

(2) *Other lands.* For lands adjacent to any other highway or more than 660 feet from the edge of the rights-of-way of the Interstate System and the primary system, the authorized officer may establish public service advertising zones and safety rest areas. The authorized officer may issue permits for the erection and maintenance of advertising displays in such areas. He may also authorize signs advertising activities on the property on which the activities are located, and official signs and notices.

(i) In establishing public service advertising zones and safety rest areas and in the issuance or denial of permits, the authorized officer will follow standards designed to protect the public investment in the highway or in the adjacent lands, to preserve for the public the significant scenic or other recreational values in the lands, to prevent the destruction and to insure the preservation of nature and natural beauty adjacent to the highways, to promote the safety, convenience, and enjoyment of public travel, or otherwise to protect the public interest. He will give due consideration to the need for directional and other official signs; the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof; and the interest of the traveling public in, and its need for, specific types of information.

(3) *Natural beauty.* Notwithstanding any other provision of thus subpart, no permit will be issued for the erection and maintenance of any advertising display which would be inconsistent with national programs for the preservation of natural beauty.

(4) *Identification of displays.* Each advertising display erected or maintained under a permit issued pursuant to the regulations of this subpart, must, for convenient identification, have the serial number of such permit marked or painted thereon.

§ 2236.2–2 Water wells.

(a) *Applicability of general regulations.* All of the general provisions of § 2236.1 not inconsistent with the special provisions relating to permits for drilling water wells are applicable to such permits.

(b) *Additional requirements.* (1) The authorized officer may include in the permit provisions for testing of wells and for examination of records.

(2) Permits for exploratory wells shall provide that if and when the permittee abandons a well:

(i) He will notify the authorized officer of the Bureau of Land Management of the abandonment or proposed abandonment. The authorized officer will allow the permittee a reasonable time to cap or plug the well and restore the site to the satisfaction of the authorized officer. Unless the authorized officer purchases them, the permittee will be permitted to remove his improvements to the extent that such removal does not prevent restoration of the site to the satisfaction of the authorized officer.

(3) The authorized officer may require a surety bond as a condition precedent to the issuance of a well permit, to insure proper capping or plugging of the well and restoration of the site.

(4) Renewals may be granted only if, before the expiration of his prior permit, the applicant has:

(i) Actually initiated well drilling on the land, with a firm commitment to have the well completed without delay; or

(ii) Encountered unforeseeable difficulty, and although no drilling has been initiated, has made a firm commitment to have the well completed without delay.

STEWART L. UDALL,
Secretary of the Interior.

SEPTEMBER 12, 1968.

[F.R. Doc. 68–11292; Filed, Sept. 17, 1968; 8:46 a.m.]

GPO 846-297

TITLE 43--PUBLIC LANDS
INTERIOR

Chapter II--Bureau of Land Management, Department of the Interior

The following is a composite of Circulars 2247, published in 33 F.R. 14111, effective October 18, 1968, and 2257, published in 34 F.R. 857, effective January 18, 1969.

2257 replaced by 2370

PART 2230—SPECIAL USES

Subpart 2236—Permits

Subpart 2236 is revised in its entirety to read as follows:

Subpart 2236—Permits

Sec.
2236.0–2 Objectives.
2236.0–3 Authority.
2236.0–5 Definitions.
2236.1 General provisions.
2236.1–1 Application.
2236.1–2 Fees.
2236.1–3 Permits and renewals.
2236.1–4 Rental charges.
2236.1–5 Rights of applicants and permittees.
2236.1–6 Segregative effect.
2236.2 Special provisions.
2236.2–1 Advertising displays.
2236.2–2 Water wells.

§ 2236.0–2 Objectives.

(a) *General.* It is the policy of the Secretary of the Interior, in the administration of the lands under the jurisdiction of the Bureau of Land Management, to permit the beneficial use thereof, where practical, for special purposes not specifically provided for by existing law. Permits for such special use will not be issued, however, in any case where the provisions of any law may be invoked. Permits will not be issued where such issuance would be inconsistent with the objectives of the regulations in this chapter or would be in conflict with any Federal or State laws.

§ 2236.0–3 Authority.

Pursuant to sections 446, 453 and 2478 of the Revised Statutes (1875), as amended, 43 U.S.C. secs. 1, 2, 1201 (1964); the Act of September 19, 1964 (78 Stat. 986; 43 U.S.C. secs. 1411–1418 (1964)); the Act of July 14, 1960 (70 Stat. 506; 43 U.S.C. secs. 1361–1364 (1964)) and other authority, the Director of the Bureau of Land Management is authorized to perform, under the direction of the Secretary of the Interior, all executive duties relating to the public lands and other lands administered by the Secretary of the Interior through the Bureau of Land Management.

§ 2236.0–5 Definitions.

For the purposes of the regulations in this subpart,

(a) The term "advertising displays" means any signs or other devices erected or maintained for outdoor advertising or for outdoor public information purposes, except signs erected and maintained by Federal, State, or local highway authorities within highway rights-of-way.

(b) The word "highway" is used in its general sense to include all routes of public surface travel.

(c) The word "lands" means lands administered by the Secretary of the Interior through the Bureau of Land Management.

(d) The term "commercial facilities and services" means accommodations, equipment, and other related supplies and services provided by a private entrepreneur, whether an individual, group, association or qualified corporation, to facilitate public use of outdoor recreation resources. These facilities and services may include but are not limited to: Resorts, hotels, motels, trailer camps, restaurants, stores, automotive and transportation services, guide and outfitter services, marinas, and ski slopes including lifts and tows. Circ. 2257

(e) The term "sports events, races and rallies" means any outdoor sports event, including motorized vehicular events. Circ. 2257

§ 2236.1 General provisions.

§ 2236.1–1 Application.

(a) *Qualification of applicants.* Applications pursuant to this subpart may be filed by any of the following: (1) Any person 21 years of age, or over, who is a citizen of the United States, or who has declared his intention to become a citizen, (2) any group or association composed of such persons, (3) any corporation organized under the laws of the United States or of any State thereof, authorized to conduct business in the State in which the land involved is situated, (4) any agency of the Federal Government, or (5) any State or political subdivision thereof.

(b) *Form to be used.* Applications must be executed on a form approved by the Director.

(c) *Filing.* The application may be filed in any office of the Bureau of Land Management having jurisdiction over the lands.

§ 2236.1–2 Fees.

Each application for a special land-use permit or a renewal thereof must be accompanied by a nonrefundable application service fee of $10. However, no charges will be made for applications by agencies of the Federal Government or agencies of the States and political subdivisions thereof.

§ 2236.1–3 Permits and renewals.

(a) *Terms; general.* (1) A special land-use permit will be revocable in the discretion of the authorized officer at any time, upon notice, if in his judgment the lands should be devoted to another use, or the conditions of the permit have been breached.

(2) A special land-use permit will not be issued for a larger area than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed.

(b) *Stipulations.* A special land-use permit shall contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(c) *Renewals.* Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will, upon the filing of an application for renewal, be the preferred applicant for a new permit, under regulations then in force, provided no superior claim to the land has been asserted in the meantime. Renewal, if granted, will be in the form of a new permit.

(d) The applicant shall agree and stipulate that the Federal Government, Department of the Interior and the Bureau of Land Management and its representatives shall not be responsible for damage or injury to persons and property which may occur during the permitted use period or as a result of such use.

Circ. 2257

§ 2236.1–4 Rental charges.

(a) Each permittee will be required to pay to the Bureau of Land Management, in advance, a rental determined by the authorized officer as the fair market value of the privileges granted. The authorized officer will determine whether payments will be annual or otherwise; he may adjust the rental at the end of each payment period. In no case will the minimum rental charge be fixed at less than $10 per payment.

(b) No rental charges will be made for special land-use permits to agencies of the Federal Government and agencies of States and political subdivisions thereof.

(c) No refunds of rentals properly paid will be made because of the revocation of the permit at any time, or because of interference with or prevention of the exercise of the privileges granted by the permit, by mineral prospectors, locators, licensees, permittees, lessees, or patentees, or by permittees under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), or by grantees or permittees of rights-of-way under existing laws.

§ 2236.1–5 Rights of applicants and permittees.

(a) *Occupancy of land prior to permit.* An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit under this or other applicable regulation, or any use thereafter except in accordance with the terms of the permit, is unauthorized, and constitutes a trespass (see Subpart 9239 of this chapter).

(b) *Timber and other materials.* A special land-use permit will not entitle an applicant to cut and remove timber or remove any other materials from the land. If he wishes permission to do so, he must make application for such permission in accordance with the governing laws and regulations.

(c) *Assignment of permit.* (1) A permittee may not assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be accompanied by a statement signed by the assignee agreeing to be bound by the provisions of the permit if the assignment is approved, and a showing that the assignee possesses the qualifications set out in § 2236.1–1(a).

(2) All applications for assignment of special land-use permits must be accompanied by a nonrefundable application service fee of $10.

(d) *Removal of improvements.* After the revocation or expiration of a permit, the permittee may, within the time specified by the authorized officer, remove all structures which have been placed upon the premises by him or his assignor, provided all rental charges due the Government have been paid. If the permittee fails to make payment of the rental charges within 30 days from receipt of notice requiring payment or, upon revocation or expiration of the permit, fails to remove the structures within the time required by the authorized officer, the structures will become the property of the United States.

§ 2236.1–6 Segregative effect.

The lands embraced within special land-use permits will be subject to valid adverse claims theretofore or thereafter acquired and to the filing of applications and the acquisition of rights by others, including:

(b) Form to be used. Applications must be executed on a form approved by the Director.

(a) Filing. The application may be filed in any office of the Bureau of Land Management having jurisdiction over the lands.

§ 2234.1-2 Fees.

Each application for a special land-use permit or a renewal thereof must be accompanied by a nonrefundable application service fee of $10. However, no charges will be made for applications by agencies of the Federal Government or agencies of the States and political subdivisions thereof.

§ 2234.1-3 Permits and renewals.

(a) Terms; renewal. (1) A special land-use permit will be revocable in the discretion of the authorized officer at any time, upon notice if in his judgment the lands should be devoted to another use, or the conditions of the permit have been breached.

(2) A special land-use permit will not be issued for a larger area than the authorized officer determines is necessary for the contemplated use. The land may be surveyed or unsurveyed.

(3) Stipulations. A special land-use permit shall contain such stipulations as the authorized officer considers necessary to protect the lands and resources involved and the public interest in general.

(b) Renewals. Upon the expiration of a permit, if the permittee has complied with the provisions thereof, he will, upon the filing of an application for renewal, be the preferred applicant for a new permit under regulations then in force, provided no superior claim to the land has been asserted in the meantime. Renewal, if granted, will be in the form of a new permit.

(c) The applicant shall agree and stipulate that the Federal Government, Department of the Interior and the Bureau of Land Management and its representatives shall not be responsible for damage or injury to persons and property which may occur during the permitted use period or as a result of such use.

§ 2234.1-4 Annual charges.

(a) Each permittee will be required to pay to the Bureau of Land Management, in advance, a rental determined by the authorized officer as the fair market value of the privileges granted. The authorized officer will determine whether payments will be annual or otherwise. He may adjust the rental at the end of each payment period. In no case will the minimum rental charge be fixed at less than $10 per payment.

(b) No rental charge will be made for special land-use permits to agencies of the Federal Government and agencies of States and political subdivisions thereof.

(c) No refunds of rentals properly paid will be made because of the revocation of the permit at any time, or because of interference with or prevention of the exercise of the privileges granted by the permit, by reason of proper rights, leases, licenses, permits, leases, or patents, or by operation of the Act of June 8, 1926 (44 Stat. 658; 43 U.S.C. 31-43i), or by reason of petitions or protests under existing laws.

§ 2234.1-5 Rights of applicants and permittees.

(a) Occupancy of land prior to permit. An application for special land-use permit will not entitle the applicant to occupy the land prior to the issuance of a permit. Any occupation of the land prior to the issuance of a permit under this or other available regulations, or any use thereof, except in accordance with the terms of the permit, is unauthorized, and subjects a trespass (see Subpart 9239 of this chapter).

(b) Transfer and other restrictions. A special land-use permit will not entitle an applicant to cut and remove timber or remove any other materials from the land. If he wishes permission to do so, he must make application for the permission in accordance with the provisions and regulations.

(c) Assignment of permit. (1) A permittee may not assign a permit or any interest therein without the approval of the authorized officer. Proposed assignments must be accompanied by a statement signed by the assignee agreeing to be bound by the terms and conditions of the permit if the assignment is approved, and showing that the assignee possesses the qualifications set out in § 2234.1-1(c).

(2) All applications for assignment of special land-use permits must be accompanied by a nonrefundable application service fee of $10.

(d) Abandonment of land. (1) Abandonment of the occupation or exploitation of a permit, in the particular way, within the time specified by the authorized officer, results in the termination of the permit. All structures which have ceased upon the premises by him or his assignor, pursuant to permit, shall thereupon become the property of the United States.

§ 2234.1-6 Reprocessing refund.

The lands embraced within special land-use permits will be subject to valid adverse claims, preferences or privileges existing at the time of issuance and to the filing of applications and the acquisition of rights by other qualified

(a) Applications and selections under nonmineral laws, subject to the revocation of the permit.

(b) Prospecting, location, developing, mining, entering, leasing, or patenting of minerals under the applicable general mining laws or mineral leasing laws.

(c) Permits issued under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433), to explore for objects of antiquity on the public lands.

(d) The acquisition by grant or permit of rights-of-way under existing laws.

§ 2236.2 Special provisions.

§ 2236.2–1 Advertising displays.

(a) *Applicability of general regulations.* All the general provisions of § 2236.1 not inconsistent with the special provisions relating to permits for advertising displays are applicable to such permits.

(b) *Applications.* In addition to the requirements of § 2236.1–1, an application for a special land-use permit for an advertising display shall contain sufficient information concerning the nature, design, and lighting effect, if any, of the display to enable its construction from the description. A sketch or photograph showing the display, and a photograph showing the location on which it is to be placed, must be furnished. The application must identify the highway along which it is proposed to erect the display and must give the distance and direction of the site, measured by highway travel to the nearest cities or towns.

(c) *Additional requirements.* In addition to the requirements of §§ 2236.02 and 2236.1:

(1) *Lands along Interstate and primary highway Systems.* For lands within rights-of-way, and within 660 feet of the edge of the rights-of-way of the National System of Interstate and Defense Highways (Interstate System) and the primary system (Title 23, United States Code), no permit for the erection and maintenance of advertising signs will be issued until national standards for such displays are promulgated by the Secretary of Transportation in accordance with the Beautification Act of 1965. When such standards are promulgated, permits may, in the discretion of the authorized officer, be issued, consistent with such standards and such additional standards as may be established by the Secretary of the Interior.

(2) *Other lands.* For lands adjacent to any other highway or more than 660 feet from the edge of the rights-of-way of the Interstate System and the primary system, the authorized officer may establish public service advertising zones and safety rest areas. The authorized officer may issue permits for the erection and maintenance of advertising displays in such areas. He may also authorize signs advertising activities on the property on which the activities are located, and official signs and notices.

(i) In establishing public service advertising zones and safety rest areas and in the issuance or denial of permits, the authorized officer will follow standards designed to protect the public investment in the highway or in the adjacent lands, to preserve for the public the significant scenic or other recreational values in the lands, to prevent the destruction and to insure the preservation of nature and natural beauty adjacent to the highways, to promote the safety, convenience, and enjoyment of public travel, or otherwise to protect the public interest. He will give due consideration to the need for directional and other official signs; the desirability of permitting, where alternative sites are not readily available, signs advertising legitimate activities being conducted at a location within a reasonable distance thereof; and the interest of the traveling public in, and its need for, specific types of information.

(3) *Natural beauty.* Notwithstanding any other provision of thus subpart, no permit will be issued for the erection and maintenance of any advertising display which would be inconsistent with national programs for the preservation of natural beauty.

(4) *Identification of displays.* Each advertising display erected or maintained under a permit issued pursuant to the regulations of this subpart, must, for convenient identification, have the serial number of such permit marked or painted thereon.

§ 2236.2–2 Water wells.

(a) *Applicability of general regulations.* All of the general provisions of § 2236.1 not inconsistent with the special provisions relating to permits for drilling water wells are applicable to such permits.

(b) *Additional requirements.* (1) The authorized officer may include in the permit provisions for testing of wells and for examination of records.

(2) Permits for exploratory wells shall provide that if and when the permittee abandons a well:

(i) He will notify the authorized officer of the Bureau of Land Management of the abandonment or proposed abandonment. The authorized officer will allow the permittee a reasonable time to cap or plug the well and restore the site to the satisfaction of the authorized officer. Unless the authorized officer purchases them, the permittee will be permitted to remove his improvements to the extent that such removal does not prevent restoration of the site to the satisfaction of the authorized officer.

(3) The authorized officer may require a surety bond as a condition precedent to the issuance of a well permit, to insure proper capping or plugging of the well and restoration of the site.

(4) Renewals may be granted only if, before the expiration of his prior permit, the applicant has:

(i) Actually initiated well drilling on the land, with a firm commitment to have the well completed without delay; or

(ii) Encountered unforeseeable difficulty, and although no drilling has been initiated, has made a firm commitment to have the well completed without delay.

Circ. 2257

§ 2236.2–3 Commercial facilities and services.

(a) *Applicability of general regulations.* All of the general provisions of § 2236.1 not inconsistent with the special provisions relating to permits for the provision of commercial facilities and services are applicable to such permits.

Circ. 2257

(b) *Applications.* In addition to the requirements of § 2236.1, each application for a special land use permit to provide commercial facilities and services to the public must be accompanied by three copies of a statement describing (1) the proposed use of the lands, (2) public services to be provided, (3) estimated capital investment, and (4) a showing that the application involves an established or definitely proposed project. The application shall include sufficient detail concerning the plan of development to describe the facilities and/or services and their purpose adequately.

Circ 2257

(c) *Additional requirements.* Rental charges: Rental payments to the Government for permits shall provide a fair return to the United States.

Circ. 2257

(d) *Terms and conditions of permits.*—(1) *Protection.* Each permit issued by the authorized officer will contain provisions deemed necessary to protect the public health and safety, and will provide for periodic inspections for compliance.

Circ 2257

(2) *Stipulations.* Each permit to provide commercial facilities and services shall contain stipulations requiring conformance with reasonable public service rules, schedules, or charges, and any other provisions necessary to protect the public interest and the public values in the lands, as may be determined by the authorized officer.

Circ. 2257

Circ. 2257

§ 2236.2–4 Sports events, races and rallies.

(a) *Applicability of general regulations.*. All of the general provisions of § 2236.1 not inconsistent with the special provisions relating to permits for sports events, races, and rallies are applicable to such permits.

Circ. 2257

(b) *Additional requirements.* In addition to the requirements of § 2236.1 each application for a special land use permit for a sports event, race, rally, meet, or other contest or event shall be accompanied by three copies of:

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(1) A map or diagram of the proposed route of the event in sufficient detail for an on-the-ground inspection of the proposed route or location of the event.

Circ. 2257

(2) A description of the purpose of the event and estimated number of persons participating.

Circ. 2257

(3) A description, if motorized vehicles are involved, of the type and estimated number of vehicles participating.

Circ. 2257

(c) *Terms and conditions.* (1) Notwithstanding any other provision of this subpart, the authorized officer may reject any application for any activity which he considers will constitute undue hazard to participants and spectators or will irreparably impair scenic and other values.

Circ. 2257

(2) The authorized officer may require a surety bond before issuing a permit under this section. This bond shall insure:

Circ. 2257

(i) Cleanup of litter and removal of all markers or other temporary installations.

Circ. 2257

(ii) Repair of any improvements damaged as a result of the permitted use.

Circ. 2257

(iii) Restoration of any lands requiring stabilization as a result of the event.

Circ. 2257

(3) The authorized officer is authorized to release a permittee from the bond, when all terms and conditions are met.

Circ. 2257

Repl. by C-2265

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER B—LAND TENURE MANAGEMENT (2000)

[Circular 2248]

PART 2230—SPECIAL USES

Subpart 2234—Rights-of-Way

PROCESSING AND GRANTING OF RIGHTS-OF-WAY OVER RESERVATION LANDS ADMINISTERED BY THE NATIONAL PARK SERVICE

1. In § 2234.1–2, paragraph (a) is amended to read as follows:

§ 2234.1–2 Procedures.

(a) *Application.* (1) The application shall be prepared and submitted in accordance with the requirements of this section. It should be in typewritten form or legible handwriting. It must specify that it is made pursuant to the regulations in this part and that the applicant agrees that the right-of-way if approved, will be subject to the terms and conditions of the applicable regulations contained in this part. It should also cite the act to be invoked and state the primary purpose for which the right-of-way is to be used. Applications shall be filed in accordance with the provisions of § 1821.2 of this chapter, except that applications for rights-of-way over or through reservation lands administered by the National Park Service shall be filed with the Director of the National Park Service, Washington, D.C. 20240. If the right-of-way has been utilized without authority prior to the time the application is made, the application must state the date such utilization commenced and by whom, and the date the applicant alleges he obtained control of the improvements.

* * * * *

2. In § 2234.1–3, paragraph (e) is amended by changing the caption, by the addition of a new subparagraph (2) and the renumbering of the existing subparagraph "(2)" to read "(3)."

§ 2234.1–3 Nature of interest.

* * * * *

(e) *Areas of National Park System.*

* * * * *

(2) Pursuant to any statute, including those listed in this subpart, applicable to reservation lands administered by the National Park Service, rights-of-way over or through such lands will be issued by the Director of the National Park Service, or his delegate, under the regulations of this subpart.

3. In § 2234.2–4, paragraph (b) (1) (a) is amended to read as follows:

§ 2234.2–4 Under Title 23, United States Code.

* * * * *

(b) *Application; grants.* (1) (a) Except where an application involves lands wholly within an Indian reservation applications for rights-of-way and material sites under title 23, United States Code, for lands under the jurisdiction of the Department of the Interior, together with four copies of a durable and legible map shall be filed by the appropriate State highway department in the manner prescribed by § 2234.1–2(a). Maps should accurately describe the land or interest in land desired, showing the survey of the right-of-way, properly located with respect to the public land surveys so that said right-of-way may be accurately located on the ground by any competent engineer or land surveyor. The map should comply with the requirements of § 2234.1–2(d) (1), paragraphs (i) through (viii). Applications for lands wholly within an Indian reservation shall be filed in the office of the superintendent of the Bureau of Indian Affairs agency which has jurisdiction over the lands, or for lands for which there is no agency, in the office of the Area Director who has jurisdiction over the lands. Applications for lands administered by the National Park shall be filed with the Director of the National Park Service, Washington, D.C. 20240, who, notwithstanding the provisions of subparagraphs (b) (3) and (4) of this section, shall process such applications and issue grants of rights-of-way in accordance with the regulations of this subpart. Applications for lands outside of the jurisdiction of the Department of the Interior shall be filed pursuant to the rules or regulations of the Department or agency having jurisdiction over the lands.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 2, 1968.

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Circular Distribution List

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER A—GENERAL MANAGEMENT (1000)

[Circular 2249]

PART 1840—APPEALS PROCEDURES

Subpart 1843—Actions by Director

PART 1850—HEARINGS PROCEDURES

Subpart 1850—Hearings Procedures; General

Subpart 1851—Hearings on Appeals Involving Questions of Fact

Subpart 1852—Contest and Protest Proceedings

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3530—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS

Subpart 3532—Mining Operations

REPORTER'S FEES

§ 1843.5–1 [Deleted]

1. Section 1843.5–1 is deleted.

§ 1850.0–6 [Amended]

2. Paragraph (b) of § 1850.0–6 is amended by deletion of the last clause in the last sentence thereof reading: "and request for relief from reporter's fees under § 1852.3–6."

3. Section 1851.6 is amended to read:

§ 1851.6 Reporter's fees.

Reporter's fees shall be borne by the Bureau.

4. Section 1851.7 is amended to read:

§ 1851.7 Copies of transcript.

Each party shall pay for any copies of the transcript obtained by him. Unless a summary of the evidence is stipulated to, the Government will file the original copy of the transcript with the case record.

5. Section 1852.3–7 is amended to read:

§ 1852.3–7 Reporter's fees; transcript.

(a) The Government agency initiating the proceedings will pay all reporting fees in hearings in Government contest proceedings, in hearings under the Surface Resources Act of 1955, as amended, in hearings under the Multiple Mineral Development Act of 1954, as amended, where the United States is a party, and in hearings under the Mining Claims Rights Restoration Act of 1955, regardless of which party is ultimately successful.

(b) In the case of a private contest, each party will be required to pay the reporter's fees covering the party's direct evidence and cross-examination of witnesses, except that if the ultimate decision is adverse to the contestant, he must in addition pay all the reporter's fees otherwise payable by the contestee.

(c) Each party to a private contest shall be required by the Examiner to make reasonable deposits for reporter's fees from time to time in advance of taking testimony. Such deposits shall be sufficient to cover all reporter's fees for which the party may ultimately be liable under paragraph (b) of this section. Any part of a deposit not used will be returned to the depositor upon the final determination of the case except that deposits which are required to be made when a complaint is filed will not be returned if the party making the deposit does not appear at the hearing, but will be used to pay the reporter's fee. Reporter's fees will be at the rates established for the local courts, or, if the reporting is done pursuant to a contract, at rates established by the contract.

(d) Each party to a Government or private contest shall pay for any copies of the transcript obtained by him.

§ 3532.2 [Amended]

6. The last sentence of § 3532.2(b) is deleted.

STEWART L. UDALL,
Secretary of the Interior.

OCTOBER 2, 1968.

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Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

[Circular 2250]

PART 3180—SULPHUR PERMITS AND LEASES

Subpart 3182—Sulphur Prospecting Permits

APPLICATION FOR PERMIT; PERMIT RENTAL

Section 3182.1 is amended to read as follows:

§ 3182.1 Application for permit; permit rental.

(a) An application for a permit shall be filed in quintuplicate in the appropriate land office on a form approved by the Director or on an exact reproduction thereof. The form or an exact reproduction will constitute the permit when signed by the authorized officer of the land office. The application should be filled in on a typewriter or printed plainly in ink and signed in ink by the applicant or the applicant's duly authorized attorney in fact. The application shall include the information and evidence called for in §§ 3181.2 and 3183.3–1(a)(2). Each application shall be accompanied by a filing fee of $10 which is not returnable and by full payment of the first year's rental in the amount specified in paragraph (b) of this section. The rental payment shall be for the total acreage if known and if not known, for the total acreage computed on the basis of 40 acres for each smallest legal subdivision.

(b) A permittee shall pay an annual rental of 25 cents for each acre or fraction thereof covered by his permit but no less than $20 per year. Such annual payments of rental shall be made on or before the anniversary date of the permit. Payment of rental will be required on all permits issued after the effective date of this section, as amended.

STEWART L. UDALL,
Secretary of the Interior.

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